TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. [illegible] 127

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES F. BOMBE, JOHN H. GRIFFIN, A. J. THOMPSON, A. S. THOMPSON, AND V. B. SIMMONS.

APPEAL FROM THE UNITED STATES DISTRICT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MARCH 30, 1910.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1015.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON, AND V. E. THOMPSON.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 In the United States Circuit Court for the Eastern District of Oklahoma.

The United States of America, Appellant,
No. 1113. vs.
A. W. Abrams, et al., Appellees.

The following is a transcript of such of the record and proceedings heretofore had in said case as has been ordered to be prepared and authenticated as necessary to the hearing in the Court of Appeals.

2 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
vs. In Equity.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and The Iowa & Oklahoma Mining Company, a corporation, Defendants.

Bill of Complaint.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Oklahoma:

The United States of America, by George W. Wickersham, Attorney General of the United States, and Paul A. Ewert, Special Assistant to the Attorney General, brings this bill of complaint against A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, citizens and residents of the State of Kansas, A. S. Thompson, V. E. Thompson, citizens and residents of the State of Oklahoma, and The Iowa & Oklahoma Mining Company, a corporation duly organized and created under the territorial laws of Indian Territory, and now existing under and by virtue of the laws of the State of Oklahoma, and thereupon your orator for its bill of complaint, complains and says:

3 I.

That under the terms of the treaties entered into by and between your orator and the Quapaw tribe or band of Indians and the members thereof, your orator set apart for the use of the said Quapaw tribe or band certain lands located in the Indian Territory, now the Eastern District of Oklahoma, and that by the terms of the said treaties and of the laws

of the United States, your orator solemnly obligates itself to secure and protect the said Quapaw tribe or band of Indians and the members thereof in the possession, use and enjoyment of the lands so set apart for their use as aforesaid and that according to the terms of the said treaties and of the laws of the United States the said Quapaw tribe or band of Indians and every member thereof has been at all times mentioned in this bill and now is without power to dispose of any part of said lands or of any interest therein without the consent and authority of your orator or otherwise than in the manner prescribed by law.

II.

Your orator further shows that the sovereign, the Government of the United States, by reason of the helpless and dependent character of the Indian tribes, bands and nations and of the several members thereof within its borders, especially the Quapaw tribe or band of Indians and the several members thereof, and by virtue of its long established political policy, is the guardian and has the exclusive dominion and control of the property of said tribe of Indians and of the several members thereof, especially the said Quapaw tribe or band and the several members thereof, by virtue of which there is imposed upon your orator the duty to do whatever is necessary for their guidance, welfare and protection;

4 that the said Quapaw tribe or band of Indians is under the supervision and control of the Quapaw Indian Agency and has always been and is now recognized, treated and dealt with by the Government of the United States and the several branches thereof as a tribe or band of Indians; that by the third article of the treaty of May 13th, 1833, with the said Quapaw tribe or band of Indians, the United States agreed to appropriate annually one thousand dollars per year for educational purposes and five hundred dollars annually for a blacksmith to do their necessary work, together with a shop and the necessary tools and supplies; that the United States ever since said treaty has and now does annually appropriate the said sums of money, according to the provisions of the said article three of said treaty; that until the year 1899 the United States maintained two schools in the Quapaw Indian Agency for the benefit and education of the several tribes of Indians in said Agency at an annual expense to itself of nearly thirty thousand dollars; that in the year 1899 one of these schools was discontinued but the other school is still maintained at the Quapaw Indian Agency at Wyandotte, at an annual expenditure of about twenty thousand dollars, and has an average attendance of about one hundred and fifty Indian children, many of whom are members of the said Qua-

paw tribe or band of Indians; that these children while in attendance at said school are clothed and educated and fed at the expense of the United States; that the United States still maintains an Indian Agency on the said Quapaw Reservation for the benefit of the said Quapaw tribe or band of Indians, at an annual expenditure of nearly eight thousand dollars; that the United States maintains at said Indian Agency a Superintendent and Special Disbursing Agent and several assistants to assist the several tribes or bands of Indians in said Agency, and especially the said Quapaw tribe or band of Indians, in the management of their business affairs, and to act as a trustee for them in the sale of their inherited lands, according to the provision of the laws of the United States; that the said Quapaw tribe or band of Indians still maintains its tribal integrity and periodically elects its chiefs and councilors, and councils are frequently called by the said chiefs and councilors and held, and the members of the said tribe are largely influenced and governed by the deliberations and decisions thereof.

III.

Your orator further shows that in the exercise of its power to regulate, control and govern the affairs of the said Quapaw tribe or band of Indians and the members thereof, having in view the welfare of the said Indians and the carrying out of its treaty obligations thereto and in its various capacities, your orator, through its legislative branch, the Congress of the United States, passed certain Acts of Congress which were duly approved by the President of the United States, among others, to-wit: that portion of the Act of Congress approved March 2, 1895, being a part of the Indian Appropriation Act of the year 1895, (28 Statutes at Large, page 907), providing for the allotment in severalty of the lands theretofore set apart for the use of certain tribes or bands of Indians, including those set apart for the said Quapaw tribe or band of Indians under the laws and treaties hereinbefore mentioned; that the said Act of Congress so approved March 2, 1895, provided as follows:

"That the allotments of land made to the Quapaw Indians, In the Indian Territory, in pursuance of an Act of the Quapaw National Council, approved March twenty-third, eighteen hundred and ninety-three, be and the same are hereby ratified and confirmed, subject to revision, correction and approval by the Secretary of the Interior; Provided, However, That any allottee who may be dissatisfied with his allotment shall have all the rights to contest the same provided for in said Act of the Quapaw National Council subject to revision, correction, and approval by the Secretary

of the Interior. And the Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith; Provided, That said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents; And Provided Further, That the surplus lands on said reservation, if any, may be allotted from time to time, by said tribe to its members, under the above entitled act;"

that said Act of the Quapaw National Council approved March 23, 1893, among other things provided as follows:

Be It Enacted By The Quapaw Nation, Open Council Assembled, That our first Chief John Medicine, is here authorized and directed immediately after the passage of this "Act" by and with the consent and approval of our Second Chief, and our National Council, to appoint (3) three members of our Quapaw Nation of Indians, as an allotment Committee, and shall duly commission them in accordance with the provisions of this "Act".

Sec. 2. That said allotment Committee shall proceed, or take steps at once after their appointment, to allot to each, and every member of our Quapaw Nation of Indians now located in the Northeastern part of the Indian Territory, upon lists furnished them by our Chiefs, and Counsel, in and for said Quapaw Nation of Indians, and duly approved by the Hon. Secretary of the Interior, an "allotment" of lands of (200) two hundred acres, (—As near as may be, according to the present Government survey.—) out of our Common Reserve. To each person entitled thereto by reason of their being members of our Nation by birth, or whose adoption has been "approved" by the Hon. Secretary of the Interior.

All allotments to be selected by the Allottees, heads of families selecting for their minor children, and the Chief of our Nation for each orphan child. All differences arising between members of our Nation in making said allotments, shall be settled by our Chiefs and Council, subject to
7 appeal to the Hon. Secretary of the Interior, Provided, that before the allotments herein provided for shall be made, there shall be set apart, a Tract, or Tracts of land not exceeding (400) four hundred acres, upon which the present Government School Buildings now stand, for the use and benefit of the said Government School, so long as it shall, or may be used for school purposes by the United States.

Sec. 3. That the Allottees, members of our Quapaw Nation of Indians, and the land so allotted, shall be subject to such laws, rules and regulations, as the Hon. Secretary of the Interior, and the Congress of the United States may prescribe,

in approving this "Act" of our Quapaw National Council. Provided, That in no case or event, shall the number of acres so allotted to members of our Tribe or Nation, be decreased or diminished;"

that thereafter the Congress of the United States passed an Act which was duly approved and became a law on June 7, 1897, (30 Statutes at Large, page 72), providing for and governing the leasing of the lands allotted under the provisions of the above mentioned Act, as follows, to-wit:

"That the allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees and tenants shall have the right to employ such assistants, laborers and help from time to time as they may deem necessary; Provided, That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee can not improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms and conditions as shall be prescribed by him. All acts and parts of acts inconsistent with this are hereby repealed."

8 That thereafter, to-wit: on the 26th day of September, 1896, the United States of America, pursuant to and upon the terms, restrictions and conditions contained in the said Act of Congress approved March 3, 1895, (28 Statutes at Large, page 72), in due form issued to and in favor of Charley Quapaw Blackhawk, an Indian of the Quapaw tribe, a certain allotment patent in and to the following described lands, situated in the Quapaw Indian Agency, described as follows, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two in township twenty-nine north of range twenty-four east of Indian Meridian in Indian Territory, containing two hundred acres;

the said lands being located in what is now the County of Ottawa in the Eastern Judicial District of Oklahoma, within the jurisdiction of this Court. A copy of which said allotment patent is hereunto attached and marked Exhibit "A" and hereby made a part of this bill of complaint.

IV.

Your orator further shows that on the 11th day of January, 1902, the said Charley Quapaw Blackhawk made, executed and delivered unto A. W. Abrams a certain mining lease for a

consideration of Ten ($10.00) Dollars and a royalty of five (5%) per cent., wherein and whereby the said Charley Quapaw Blackhawk did lease and let unto the said A. A. Abrams, for mining purposes, for the full term of ten years from the date of said lease, the following described land, being all of the hereinbefore described lands allotted to the said Charley Quhpaw Blackhawk, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32), township twenty-nine (29) north of range twenty-four (24), east of the Indian Meridian, Indian Territory, containing two hundred (200) acres, more or less;

9 that the said A. W. Abrams in all things accepted the said mining lease, and thereafter, to-wit: on the 14th day of January, 1902, at 10 o'clock A. M., caused the said lease to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "Q" at page 558 thereof; a copy of which said lease is hereunto attached, marked Exhibit "B", and made a part of this bill of complaint; that thereafter, to-wit: on the 13th day of August, 1903, the said lease was, by the said A. W. Abrams, duly assigned, transferred and set over unto the Iowa and Oklahoma Mining Company, which assignment was thereafter duly filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there recorded in Book "Q" at page 558 on the margin thereof, as a marginal assignment.

And your orator further alleges and shows to the Court that the said lease so made, executed and delivered, was at the date of its execution and delivery, and now is a lawful, valid lease, under the provisions of the said Act of Congress approved June 7th, 1897, (30 Statutes at Large, page 72.)

V.

Your orators further show that on the 24th day of August, 1903, and during the existence of the said valid mining lease, marked Exhibit "B", the said Charley Quapaw Blackhawk made, executed and delivered unto A. W. Abrams, one of the defendants in this action, a certain mining lease wherein and whereby the said Charley Quapaw Blackhawk, contrary to and in violation of the express provisions of the said Act of

10 Congress approved March 2, 1895, (28 Statutes at Large, page 907), and of the said Act of Congress ap-

proved June 7, 1897, (30 Statutes at Large, page 72) did demise and lease unto the said A. W. Abrams, for mining purposes, for the term of ten years from the date of said lease, in consideration of a royalty of five (5%) per cent, per annum, the following described land, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32), township twenty-nine (29), north range twenty-four (24) east of the Indian Meridian in Indian Territory, containing two hundred acres;

being the lands allotted to the said Charley Quapaw Blackhawk, Exhibit "A"; that the said A. W. Abrams in all things accepted the said lease, and thereafter, to-wit: on the 25th day of August, 1903, at 11 o'clock A. M. caused the said mining lease to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "S" on page 55 thereof; a copy of which said mining lease is hereunto attached, marked Exhibit "C" and made a part of this bill of complaint; that thereafter, towit: on the 2d day of November, 1904, the said lease was, by the said A. W. Abrams, duly assigned, transferred and set over unto the Iowa and Oklahoma Mining Company, which assignment was thereafter filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there recorded in Book "S" at page 55 on the margin thereof, as a marginal assignment.

11 VI.

Your orator further shows that on the 25th day of March, 1905, and during the existence of the said valid mining lease, marked Exhibit "B", the said Charley Quapaw Blackhawk made, executed and delivered unto L. C. Jones and A. J. Thompson two of the defendants herein named, a certain mining lease wherein and whereby the said Charley Quapaw Blackhawk, contrary to and in violation of the express provisions of the said Act of Congress approved March 2, 1895, (28 Statutes at Large, page 907), and of the said Act of Congress approved June 7, 1897 (30 Statutes at Large, page 72), did demise and lease unto the said L. C. Jones and A. J. Thompson, for mining purposes, for the term of ten years from the date of said lease, in consideration of Ten ($10.00)

Dollars and five (5%) per cent. royalty, the following described land, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32), township twenty-nine (29) north of range twenty-four (24) east of the Indian Meridian, Indian Territory, containing two hundred (200) acres, more or less;

being the lands allotted to the said Charley Quapaw Blackhawk, Exhibit "A"; that the said L. C. Jones and A. J. Thompson in all things accepted the said mining lease, and thereafter, towit: On the 29th day of March, 1905, at 8 o'clock A. M., caused the said mining lease to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "D" at page 548 thereof; a copy of which said mining lease is hereunto attached, marked Exhibit "D" and made a part of this bill of complaint.

That thereafter, to-wit: on the 31st day of July, 1905, the said L. C. Jones assigned all his right, title and interest in and to and under the said hereinbefore mentioned
12 lease to the said A. J. Thompson, who, on the 30th day of June, 1906, at 1 o'clock P. M., caused the said assignment to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "G" at page 314 thereof; a copy of which said assignment is hereunto attached, marked Exhibit "E" and made a part of this bill of complaint.

VII.

Your orator further shows that on the 4th day of April, 1905, and during the existence of the said valid mining lease, marked Exhibit "B", the said Charley Quapaw Blackhawk, made, executed and delivered unto the Iowa and Oklahoma Mining Company, a corporation, one of the defendants in this action, a certain mining lease wherein and whereby the said Charley Quapaw Blackhawk, contrary to and in violation of the express provisions of the said Act of Congress approved March 2, 1895, (28 Statutes at Large page 907), and of the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), did demise and lease unto the said The Iowa and Oklahoma Mining Company, a corporation, for mining purposes, for the term of ten

years from the date of said lease, in consideration of Twenty-five ($25.00) Dollars and five (5%) per cent. royalty, the following described land, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32), township twenty-nine (29) north of range twenty-four (24) east of the Indian Meridian, Indian Territory, containing two hundred (200) acres;

being the lands allotted to the said Charley Quapaw Blackhawk, Exhibit "A"; that the said The Iowa and Oklahoma Mining Company, a corporation, in all things accepted the said mining lease, and thereafter, to-wit: on the 5th
13 day of April, 1905, at 11 o'clock A. M., caused the said mining lease to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "S" at page 176 thereof; a copy of which said mining lease is hereto attached, marked Exhibit "F", and made a part of this bill of complaint.

VIII.

Your orator further shows that on the 12th day of May, 1906, and during the existence of the said valid mining lease marked Exhibit "B", the said Charley Quapaw Blackhawk made, executed and delivered unto the said The Iowa and Oklahoma Mining Company, a corporation, a certain mining or business lease wherein and whereby the said Charley Quapaw Blackhawk, contrary to and in violation of the express provisions of the said Act of oCngress approved March 2, 1895, (28 Statutes at Large, page 907), and of the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), did demise and lease unto the said The Iowa and Oklahoma Mining Company for mining purposes, for the term of ten years from the date of said lease, in consideration of Twenty-five ($25.00) Dollars and five (5%) per cent. royalty, the following described land, to-wit:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32) in township twenty-nine (29) north of range twenty-four (24) east of the Indian Meridian, Indian Territory, containing two hundred (200) acres more or less;

being a portion of the lands allotted to the said Charley Quapaw Blackhawk, Exhibit "A", that the said The Iowa and Oklahoma Mining Company in all things accepted the said

mining or business lease, and thereafter, to-wit: on the
14 23rd day of May, 1906, at 8 o'clock A. M., caused the said lease to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "G" at page 296 thereof; a copy of which said mining or business lease is hereunto attached, marked Exhibit "G", and made a part of this bill of complaint.

IX.

Your orator further shows that on the 28th day of July, 1906, and during the existence of the said valid mining lease marked Exhibit "B", the said Charley Quapaw Blackhawk made, executed and delivered into the said The Iowa and Oklahoma Mining Company, a corporation, a certain mining or business lease wherein and whereby the said Charley Quapaw Blackhawk, contrary to and in violation of the express provisions of the said Act of Congress approved March 2, 1895, (28 Statutes at Large, page 907), and of the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), did demise and lease unto the said The Iowa and Oklahoma Mining Company for mining purposes, for the term of twenty years from the date of said lease, in consideration of Twenty-one ($21.00) Dollars and five (5%) per cent. royalty, the following described land, to-wit:

The northwest quarter and the northwest quarter of southwest quarter of section thirty-two (32), township twenty-nine (29) north of range twenty-four (24) east of the Indian Meridian, Indian Territory, containing two hundred (200) acres, more or less;

being a portion of the lands allotted to the said Charley Quapaw Blackhawk, Exhibit "A"; that the said The Iowa and Oklahoma Mining Company in all things accepted the said mining or business lease, and thereafter, to-wit: on the 23d day of July, 1906, at 8 o'clock A. M., caused the said lease to
15 be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the City of Miami in said Territory, and there to be recorded in Book "G" at page 337 thereof; a copy of which said mining or business lease is hereunto attached, marked Exhibit "H", and made a part of this bill of complaint.

X.

Your orator further shows that the said Charley Quapaw Blackhawk is a full blood Quapaw Indian, of the Quapaw tribe; that he was born in 1835; that at the time of the execution of all of the mining lease and contracts hereinbefore set forth he was, and now is unable to read, or write, or understand intelligently the English language; that during all of the times mentioned in this bill of complaint he was, and now is an ignorant and uneducated child of nature and entirely unable to comprehend relative values or to calculate the future values of present property or interests, and during all of the said times he was old and infirm and wholly incapacitated for the transaction of business; that the lands hereinbefore mentioned were at the time of the giving of all of the mining leases or contracts hereinbefore set forth, of great value, and now are worth approximately one hundred thousand dollars.

Your orator further shows that on January 11th, 1902, when the valid mining lease, set forth in paragraph IV, was made, executed and delivered, the lands hereinbefore mentioned had not been prospected and the value thereof, for mining purposes was uncertain and undetermined, and the consideration of a royalty of five (5%) per cent. of the value of the ore taken from the said lands during the life of the said valid lease was, and is an equitable and sufficient consideration therefor, but your orator shows that immediately after the giving of the said lease the defendant A. W. Abrams caused the said lands to be drilled and prospected, and found thereon large, valuable and paying bodies of lead and zinc ore; that as early as 1904 the discovery of these valuable and paying bodies of ore was so certain and of so great richness and value that large mills or concentrating plants were erected upon the said land for the purpose of mining and concentrating the said lead and zinc ore; that there are now, and have been for the last five years past, a number of concentrating plants or so called "ore mills" located upon the said lands and in operation, and the annual value of the output thereof, when in operation, is in excess of fifty thousand dollars per annum; that on January 19th, 1905 and before, the said A. W. Abrams, through his assignee The Iowa and Oklahoma Mining Company, sub-let and sub-leased to other mining companies portions of the lands hereinbefore mentioned, for a consideration of, and under contracts and leases drawing the sum of fifteen (15%) per cent. of the market value of the ores mined upon the said lands, and your orator alleges that fifteen (15%) per cent. royalty is a fair and reasonable consideration or royalty to be paid, and has been ever since the 1st day of August, 1903; that on August 24th, 1903, and at

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and during all of the dates herein mentioned, the said defendants and each of them respectively, well knowing the value of the mineral deposits in said lands, and the ignorance incompetency and incapacity of the said Charley Quapaw Blackhawk, and his entire inability to comprehend values, fraudulently took advantage thereof, and respectively procured him to sign those certain writings hereinbefore set forth in paragraphs V, VI, VII, VIII, and IX, and their said acts in
17 so doing were inequitable and unconscionable and a fraud upon the said Charley Quapaw Blackhawk, and upon your orator, and should, because of the said reasons, by this Court be set aside and canceled and held for naught, and so your orator prays.

XI.

Your orator further shows that on the 16th day of August, 1902, the said Charley Quapaw Blackhawk made, executed and delivered unto Charles F. Noble, one of the defendants in this action, a certain instrument designated as an assignment contract, wherein and whereby the said Charles Quapaw Blackhawk did, in violation of and contrary to the express provisions of the said Act of Congress approved March 2, 1895, (28 Statutes at Large, page 907), and the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), among other things sell, assign and transfer unto the said Charles F. Noble, for a term of ten years from the 16th day of August, 1902, all right, title and interest in and to all royalties that might become due and payable to him upon ores sold from the

Northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32) in township twenty-nine (29) north of range twenty-four (24) east of the Indian Meridian, Indian Territory,

all as more fully set forth in the said lease, a copy of which is hereunto attached, marked Exhibit "B" and made a part of this bill of complaint; that the said Charles F. Noble in all things accepted the said assignment contract and thereafter, to-wit: on the 18th day of August, 1902, at 1 o'clock P. M., caused the said contract for the assignment of royalties to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there
18 to be recorded in Book "R" at page 437 thereof; a copy of which said assignment is hereunto attached, marked Exhibit "I" and made a part of this bill of complaint; that thereafter, to-wit, on the 16th day of August, 1902, the said

Charles F. Noble assigned a one-half interest in and to the said hereinbefore mentioned assignment contract to John M. Cooper, one of the defendants in this action, which assignment was thereafter filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there recorded in Book "R" at page 437 on the margin thereof, as a marginal assignment.

XII.

Your orator further shows that on the 21st day of February, 1906, the said Charley Quapaw Blackhawk made, executed and delivered unto A. S. Thompson and V. E. Thompson, two of the defendants in this action, a certain instrument designated as an assignment contract, wherein and whereby the said Charley Quapaw Blackhawk did, in violation of and contrary to the express provisions of the said Act of Congress approved March 2, 1895, (28 Statutes at Large, page 907), and the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), among other things, sell, assign and transfer unto the said A. S. Thompson and V. E. Thompson, for a period from February 21st, 1906, up to and including January 11, 1912, one and one-fourth (1¼%) per cent. of the whole product produced on said land, described as follows, to-wit:

The northwest quarter and the northwest quarter of section thirty-two (32), township twenty-nine (29), north range twenty-four (24) east of the Indian Meridian, Indian Territory,

all as more fully set forth in said lease, a copy of which is hereunto attached, marked Exhibit "B", and made a
19 part of this bill of complaint; that the said A. S. Thompson and V. E. Thompson in all things accepted the said assignment contract, and thereafter, to-wit: on the 26th day of February, 1905, caused the said contract for the assignment of royalties to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the city of Miami in said Territory, and there to be recorded in Book "G" at page 187 thereof; a copy of which said assignment is hereunto attached, marked Exhibit "J" and made a part of this bill of complaint.

XIII.

Your orator further shows that A. W. Abrams, the same person hereinbefore named as a defendant, is now and was during all the times mentioned in this bill of complaint, the

Secretary and Managing Officer of the said Iowa and Oklahoma Mining Company and the identical person whose signature is attached to the mining or business leases mentioned in paragraphs IV and V respectively, as A. W. Abrams, Sect.

XIV.

Your orator further shows that by virtue of the said Act of Congress approved March 2, 1895, (28 Statutes at Large, page 907), under the provisions of which the said Charley Quapaw Blackhawk received his said patent, and by virtue of the said inhibition against alienation for the period of twenty-five [—], the said Charles Quapaw Blackhawk, during all the times mentioned in this bill of complaint, was without lawful authority or legal power to make any lease to the said lands for either farming or grazing purposes, or mining or business purposes, other than as expressly permitted and provided for under the provisions of the said Act of Congress approved June 7, 1897, (30 Statutes at Large, page 72), which in terms authorized the allottees of land within the limits of the Quapaw Agency, Indian Territory, to lease their allotted, or parts thereof, for a term not to exceed three years for farming or grazing purposes, or ten years for mining or business purposes; that by reason of the said inhibition against alienation of the lands so allotted to members of the Quapaw tribe of Indians and the express terms contained in the said Act of June 7, 1897, the said lease given by Charley Quapaw Blackhawk, upon the hereinbefore mentioned lands, to A. W. Abrams, as set forth in paragraph V of this bill of complaint, together with the assignment thereof to The Iowa and Oklahoma Mining Company, is null and void and of no effect in law; that for said reasons the mining lease made by Charley Quapaw Blackhawk to L. C. Jones and A. J. Thompson, upon the herinbefore described lands, as set forth in paragraph VI of this bill of complaint, together with the assignment thereof, is likewise null and void and of no effect as a lease upon the said lands; that for said reasons the mining lease given by Charley Quapaw Blackhawk, to The Iowa and Oklahoma Mining Company, upon the hereinbefore described lands, as set forth in paragraph VII of this bill of complaint, is also null and void and of no effect in law; that for said reasons the mining or business lease given by Charley Quapaw Blackhawk to The Iowa and Oklahoma Mining Company, upon the hereinbefore described lands, as set forth in paragraph VIII of this bill of complaint is also null and void and of no effect in law; that for said reasons the mining or business lease given by Charley Quapaw Blackhawk to The Iowa and Oklahoma Mining Company, upon the hereinbefore described lands, as set forth in paragraph IX of this bill of complaint is also null and

void and of no effect in law; that for said reasons the instrument designated as an assignment contfact made, executed and delivered by Charley Quapaw Blackhawk to Charles F. Noble, as set forth in paragraph XI of this bill of com-
21 plaint is also null and void and of no effect in law; that for said reasons that certain instrument designated as an assignment contract made, executed and delivered by Charley Quapaw Blackhawk to A. S. Thompson and V. Thompson as set forth in paragraph XII of this bill of complaint is also null and void and of no effect in law.

XV.

Your orator further shows that the said mining lease, marked Exhibit "C", so made and executed as hereinbefore alleged and so placed of record, together with the assignment thereof, so made and executed and so placed of record, and that certain mining lease, marked Exhibit "D", so made and executed as hereinbefore alleged, and so placed of record, together with the assignment thereof, marked Exhibit "E", so made and executed and so placed of record, and that certain mining lease, marked Exhibit "F", so made and executed as hereinbefore alleged, and so placed of record, and that certain mining or business lease, marked Exhibit "G", so made and executed as hereinbefore alleged, and so placed of record, and that certain mining or business lease, marked Exhibit "H", so made and executed as hereinbefore alleged, and so placed of record, that the said instrument designated as an assignment contract, marked Exhibit "I", so made and executed as hereinbefore alleged, and so placed of record, and that certain instrument designated as an assignment contract, marked Exhibit "J", so made and executed as hereinbefore alleged, and so placed of record, each and all constitutes a cloud upon the title of the said Charley Quapaw Blackhawk in and to the lands hereinbefore described and thereby cause irreparable injury and loss to the said Indian allottee; and that each and all of the said acts of the
22 said Charley Quapaw Blackhawk and the said defendants were done in disregard and in open violation of the conditions attached to the said grant of lands by your orator to the said Charley Quapaw Blackhawk.

And your orator further shows that immediately after the delivery of the said mining leases, the said defendants took possession of the said lands described in the said several instruments in their respective capacities as lessees, and ever since, against the demand and protest of the said Charley Quapaw Blackhawk and of your orator have occupied and maintained such possession and asserted their respective rights of possession thereto, and the royalties therefrom, and deprived the said Charley Quapaw Blackhawk of the use and possession of

the said lands; that each and all of the hereinbefore mentioned instruments so recorded, and the claims and assertions of possession, and ownership of the royalties by the defendants, of the said lands hereinbefore described, save as to the lawful lease, constitute a cloud upon the title of the said allottee, Charley Quapaw Blackhawk, in and to the said lands, and upon the rights of your orator therein, and an infraction of the conditions attached by your orator to the grant of the said lands to the said Charley Quapaw Blackhawk.

And your orator further shows that all of the said unlawful and inequitable acts and doings of the said defendants were in open violation and defiance and evasion of the laws of the United States relating to the disposal of the lands so allotted and patented to the said Charley Quapaw Blackhawk, and of the will of Congress with respect thereto, and were done in open violation, defiance and evasion of the duty owing to the said Quapaw tribe of Indians and to the said Charley Quapaw Blackhawk, by the complainant by reason of its said treaty obligations and of the laws of the United States, and
23 that all of the said unlawful and inequitable acts and doings of the said defendants, and the effects thereof, are prejudicial to the care, control and government of the said Indian tribes and the members thereof.

And your orator further shows that it is the manifest duty of the said complainant as the sovereign Government, by reason of its guarantees to the said tribes of Indians and the members thereof, to protect them and each of them in the enjoyment and peaceable possession of the lands so granted to them by the United States against any unlawful interference or occupation of others, and by reason of the guardianship over the said tribes of Indians and the members thereof as declared by the Political Department of the United States, and by reason of its right and duty to enforce the conditions inhibiting alienation within twenty-five years contained in its said grant of land to the said Charley Quapaw Blackhawk, to bring this bill of complaint in order to cancel and annul and render of no effect each and all of the said unlawful and inequitable acts and doings of the said defendants herein as in this bill set forth and mentioned; and so your orator does bring this bill in behalf of the said Charley Quapaw Blackhawk, as well as in its own behalf, in its capacity as guardian of the said tribe of Quapaw Indians and the individual members thereof, and in its sovereign capacity by reason of its guarantees by treaty and the laws of the United States, made to the said tribe of Indians and the members thereof, to protect them in the enjoyment and peaceable possession of the lands granted to them by the United States, and in its own behalf as grantor of the said lands to the said Charley

Quapaw Blackhawk, for the purpose of protecting and enforcing the condition of its grant to the said Charley Quapaw Blackhawk, inhibiting the alienation of the said lands to him
24 so patented, for the period of twenty-five years from the date of the issuance thereof.

Forasmuch, therefore, as your orator is remediless in the premises at and by the strict rules of the common law and can have relief only in a Court of equity where matters of this nature are properly cognizable and relievable and to the end that the said defendants may, if they can, show why your orator should not have the relief herein prayed, and may according to the best of their knowledge, remembrance, information and belif, full, true, direct and perfect answer make to all and singular the charges aforesaid, but not under oath (answer on oath being hereby expressly waived), your orator prays as follows:

First: That the said mining lease made, executed and delivered under date of August 24th, 1903, by the said Charley Quapaw Blackhawk to A. W. Abrams, marked Exhibit "C", be ordered surrendered for cancellation and that the same be canceled of record and annulled and held for naught, and that the assignment thereof to The Iowa and Oklahoma Mining Company be also surrendered, canceled and held for naught.

Second: That the said mining lease made, executed and delivered under date of March 25th, 1905, by the said Charley Quapaw Blackhawk to the said L. C. Jones and A. J. Thompson, marked Exhibit "D", be ordered surrendered for cancellation and that the same be canceled of record and held for naught, and that the said assignment thereof, marked Exhibit "E", be also surrendered, canceled and held for naught.

Third: That the said mining lease made, executed and delivered under date of April 4th, 1905, by the said Charley
25 Quapaw Blackhawk to the said The Iowa and Oklahoma Mining Company, marked Exhibit "F", be ordered surrendered for cancellation and that the same be cancelled of record and held for naught.

Fourth: That the said mining or business lease made, executed and delivered under date of May 12th, 1906, by the said Charley Quapaw Blackhawk to The Iowa and Oklahoma Mining Company, marked Exhibit "G", be ordered surrendered for cancellation and that the same be canceled of record and held for naught, in so much thereof as described or includes any portion of the lands so patented to the said Charley Quapaw Blackhawk.

Fifth: That the said mining or business lease made, executed and delivered under date of July 28th, 1906, by the said Charley Quapaw Blackhawk to The Iowa and Oklahoma Mining Company, marked Exhibit "H" be ordered surrendered for cancellation and that the same be canceled of record and held for naught, in so much thereof as described or includes any portion of the lands so patented to the said Charley Quapaw Blackhawk.

Sixth: That the said instrument designated as an assignment contract made, executed and delivered under date of August 16th, 1902, by the said Charley Quapaw Blackhawk to Charles F. Noble, marked Exhibit "I", be ordered surrendered for cancellation and that the same be canceled of record and held for naught.

Seventh: That the said instrument designated as an assignment contract made, executed and delivered under date of February 21st, 1906, by the said Charley Quapaw Blackhawk to the said A. S. Thompson and V. E. Thompson, marked
26 Exhibit "J" be ordered surrendered for cancellation and that the same be canceled of record and held for naught.

Eighth: That the legal title to the hereinbefore mentioned lands be declared to be in the said Charley Quapaw Blackhawk, subject only to the condition against alienation as contained in the said patent issued to the said Charley Quapaw Blackhawk, marked Exhibit "A" and attached to this bill of complaint.

Ninth: That the possession of the said land be restored to the said Charley Quapaw Blackhawk subject only to that certain valid mining lease, made executed and delivered by the said Charley Quapaw Blackhawk, under date of January 11th, 1902, to the said A. W. Abrams, marked Exhibit "B" and made a part of this bill of complaint, together with the assignment thereof, under date of August 13th, 1903, to the said The Iowa and Oklahoma Mining Company.

Tenth: And that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience and to the Court seem equitable and just.

And may it please your Honor to grant unto your orator a writ of Subpoena issued out of and under the seal of your Honorable Court directing the said A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa and Oklahoma Mining Company, a corporation, commanding them and each of them to appear before this Court on a day certain to be fixed by the

Court and then and there to stand to and abide by such
27 order, judgment and decree herein as to your Honor shall seem fit and proper, and as in duty bound your orator will ever pray.

GEO. W. WICKERSHAM,
Attorney General of the United States.
PAUL A. EWERT,
Special Assistant to the Attorney General.

Endorsed on back: #1113. In Equity. United States of America, Complainant, vs. A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and The Iowa and Oklahoma Mining Company, a corporation. Bill of Complaint. Filed Jul. 26, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla. George W. Wickersham, Attorney General, and Paul A. Ewert, Special Assistant to the Attorney General, Attorneys for Complainant.

28 And thereafter on the 23rd day of August, 1909, defendants Chas. F. Noble, John M. Cooper & A. J. Thompson by their attorney J. J. Bulger filed their appearance herein.

(Said appearance being in words and figures as follows)

In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States
No. 1113. vs. Equity Page....
A. W. Abrams, et al.

Now comes the Defendant Chas. F. Noble, John M. Cooper & J. A. Thompson by J. J. Bulger, solicitors and enter appearance in this suit; and to the complainant's bill of complaint herein.

To the Clerk of said Court:

Enter the above in the Order Book in Equity of said Court.

J. J. BULGER,
Solicitor for Defendant.

Endorsed: No. 1113. United States, vs. A. W. Abrams, et al. Filed Aug. 23, 1909. L. G. Disney, Clerk U S. Circuit Court, Eastern District Okla.

29 And thereafter on the 3rd day of September, 1909, the defendants V. E. Thompson & A. S. Thompson by their attorney V. E. Thompson filed their appearance herein.

(Said appearance being in words and figures as follows)

In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States
No. 1113. vs. Page.....
A. W. Abrams, et al.

Now comes the Defendants V. E. Thompson and A. S. Thompson by V. E. Thompson, their solicitor and enter their appearance in the suit; and to the complainant's bill of Complaint herein ask until the next succeeding rule day after the rule day to which this appearance is returnable to demur to the jurisdiction of the court and for other grounds.

To the Clerk of said Court:

Enter the above in the Order Book in Equity of said Court.

V. E. THOMPSON,
Solicitor for Defendants.

Endorsed: No. 1113. United States. United States of America, vs. A. W. Abrams, et al. Appearance of V. E. Thompson, A. S. Thompson. Filed Sept. 3, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

30 And thereafter on the 6th day of September, 1909 the defendants A. W. Abrams and The Iowa & Oklahoma Mining Co., by their attorney S. C. Fullerton filed their appearance herein.

(Said appearance is in words and figures as follows).

31 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
vs.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, a corporation, Defendants.

Appearance of A. W. Abrams and The Iowa and Oklahoma Mining Company, a corporation, Defendant.

Now comes A. W. Abrams and The Iowa and Oklahoma Mining Company, a corporation, two of the above named defendants, by S. C. Fullerton, their solicitor, and enter their appearance in this suit; and to the complainant's bill herein will, or before the Rule Day in October 1909, plead.

To the Clerk of said Court,—

Enter the above in the Order Book in Equity of said Court.

A. W. ABRAMS and
THE IOWA & OKLA. MINING CO.,
a corporation, Defendants.
By S. C. Fullerton,
Their Solicitor.

Endorsed: No. 1113. Equity. United States of America, Complainant, vs. A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and The Iowa and Oklahoma Mining Company, a corporation, Defendants. Appearance of A. W. Abrams and The Iowa and Oklahoma Mining Company, a corporation, Defendants. Filed Sept. 6, 1909. L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla. S. C. Fullerton, Solicitor for A. W. Abrams and The Iowa & Oklahoma Mining Company, defendants.

32 And thereafter on the 7th day of September, 1909, the defendants A. W. Abrams, Charles F. Noble, John M. Cooper, A. J. Thompson, and The Iowa & Oklahoma Mining Company filed their demurrer herein.

(Said Demurrer is in words and figures as follows)

33 In the Circuit Court of the United States for the Eastern District of Oklahoma.

The United States of America, Complainant,
No. 1113. vs. In Equity.
A. W. Abrams, et al., Defendants.

To the Honorable Judge of the Circuit Court of the United States of America for the Eastern District of Oklahoma.

Demurrer of A. W. Abrams, Charles F. Noble, John M. Cooper, A. J. Thompson, and the Iowa and Oklahoma Mining Company, a corporation, five of the defendants in the above entitled cause to the bill of complaint of the United States of America, the Complainant.

The above named defendants, by protestation, not confessing or acknowledging any or all of the matters and things in the Complainant's bill to be true in the manner and form therein set forth and alleged entered this, their demurrer to the bill of complaint upon the following grounds, namely:

1. That the Complainant has no interest in the matters and things set out and alleged in said bill, and no right, title interest or claim in or to the lands described therein, which

would or does entitle it to maintain this suit as to such matters and things, or as to said lands, or obtain the relief sought in relation thereto.

2. That although the bill alleged as a conclusion of law, that the Complainant is the guardian of the person to whom the land described in said bill was allotted, the Complainant is not in fact or in law such guardian of said person, and the conclusion of law is incorrect; and the Complainant has no right, authority, duty or function, either in its own right, or as guardian or sovereign, which would or does entitle it to maintain said bill.

3. That it does not appear from the bill that the Complainant or the Quapaw tribe or nation of Indians, or any Indian, has any right, title or interest in, or claim to, the said land or any part thereof, or any interest in the matters and things in said bill set forth and alleged.

4. That it does not appear that the allottee named in said bill has requested the Complainant to exhibit said bill against these defendants.

5. That the Complainant has not in and by said bill made and stated any such case as to entitle it to such relief as [in] therein sought and prayed against these defendant.

34 5. That upon the theory that the bill is exhibited against the several defendants by the complainant as the authorized representative of, and for the sole benefit and interest of the individual to whom the land therein described was allotted, and not in the interest of, or for the benefit of the complainant, it does not appear from said bill that said land, or any of the distinct matters and things in controversy, is of the value of Two thousand dollars, nor does it appear that all of the said matters and things in controversy, are of said value, nor does it appear that there is a diversity of citizenship between the said individual for whose benefit the suit is brought and these defendants, and this court therefore has no jurisdiction of this bill or any part thereof, because the bill does not disclose such a state of facts as would or does entitle the complainant to recover in this suit in any event.

Wherefore, For these and divers other causes of demurrer appearing in said bill, these defendants demur thereto, and humbly demand the judgment of the Court whether they shall be compelled to make [and] further or other answer to said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

J. J. BULGER,
Solicitor for defendants.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

.....
Of Counsel for defendants.

State of Kansas,
Cherokee County—ss.

John M. Cooper, being first duly sworn on oath says that he is one of the defendants in the above entitled suit and that the foregoing demurrer is not interposed for delay.

JOHN M. COOPER.

Subscribed and sworn to before me this 4 day of Sept. 1909.

(Seal) W. W. WYATT,
Notary Public.

My commission expires June 8, 1912.

Endorsed on back: In Equity 1113, United States of America, Complainant, vs. A. W. Abrams, John M. Cooper, et al., Defendants. Demurrer. Filed Sep. 7, 1909, L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

35 And thereafter on the 4th day of October, 1909, the defendants A. S. Thompson and V. E. Thompson for themselves filed demurrer to the Bill of Complaint.

(Said Demurrer is in words and figures as follows)

And thereafter on the same day the defendants A. W. Abrams & the Iowa & Oklahoma Mining Co. by their attorney S. C. Fullerton filed demurrer herein.

(Said Demurrer being in words and figures as follows)

36 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
1113. vs. In Equity.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and The Iowa & Oklahoma Mining Company, Defendant.

Demurrer of A. S. Thompson and V. E. Thompson.

To the Honorable Judge of the Circuit Court of the United States for the Eastern District of Oklahoma.

The defendants, respectively, A. S. Thompson and V. E. Thompson, by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's bill to be true in such manner and form as the same are there-

in set forth and alleged demur thereto and for cause of demurrer shows:

1. That is appears by the Complainant's own showing by the said bill that it is not entitled to the relief prayed by said bill against these defendants.

2. That it appears from said bill of complaint of Complainant that this court has no jurisdiction to hear and determine this action.

3. That said bill of complaint of Complainant is wholly without equity.

4. That the United States of America, complainant herein has no interest in the subject matter of this suit as against these defendants and that said party complainant does not represent any person having an interest therein adverse to these defendants.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants, respectively demur thereto and pray the judgment of this Honorable court
37 whether they shall be compelled to make further or any answer to said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

A. S. THOMPSON,
V. E. THOMPSON,
Defendant appearing on their own behalf.

State of Oklahoma,
County of Ottawa.—ss.

A. S. Thompson and V. E. Thompson, being first duly sworn each for himself deposes and says: that we appear as counsel herein and state that the foregoing demurrer is in our opinion well founded in point of law and that the same is not interposed for delay.

A. S. THOMPSON,
V. E. THOMPSON,

Subscribed and sworn to before me the undersigned notary public in and for the County of Ottawa in the State of Oklahoma this 1st, day of October, 1909.

(Seal) ED. HUGGINS SMITH,
Notary Public.

My Commission expires 4/2/12.

38 Endorsed on back No. 1113. In the U. S. Circuit Court Eastern District, Oklahoma. No. ..... File No..... Date .... No. 1113. Equity United States of America, Complainant, vs. A. W. Abrams, et al., Defendant. Demurrer Filed Oct. 4, 1909. L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla. A. S. Thompson & V. E. Thompson, Appearing in their own behalf.

39 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America,
vs.
A. W. Abrams, Chas. F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and the Iowa & Oklahoma Mining Company, Defendants.

The demurrer of A. W. Abrams and the Iowa and Oklahoma Mining Company, a corporation, defendants in the above entitled suit to the bill of complaint of the plaintiff therein.

The defendants A. W. Abrams and the Iowa & Oklahoma Mining Company, a corporation by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein set forth and alleged enters this their demurrer to and against said bill upon the following grounds,

1st. That the said complainant has not shown by said bill of complaint any title to or interest in, the subject matter of this suit as against these defendants, or either of them.

2nd. That by operation of law complainant has been deprived of all title and interest claimed in the bill of complaint in the subject matter of this suit.

3rd. That if there be presented by the bill of complaint in this suit a cause for equitable jurisdiction in favor of the party for whose benefit said suit is brought and against these defendants, or either of them, the Courts of the State of Oklahoma are invested with and possess such jurisdiction.

4th. That this Honorable Court has no jurisdiction in the premises, the alleged controversy, if any, being between citizens of the United States exclusively, the Quapaw Indians being no longer if in law they ever were, a tribe of Indians within the meaning of the Constitution and laws of the United
40 States.

5th. That the person in whose behalf complainant institutes and seeks to prosecute this suit is a citizen of the United States and of the State of Oklahoma, and the United States is not a guardian over him.

6th. That this defendant is not answerable to the complainant concerning the matters and things complained of in its bill of complaint filed herein.

7th. That this suit is not prosecuted by the real party in interest, nor does it appear from the allegations of said bill that this suit is instituted at the request of such person in whose behalf complainant seeks or complainant seeks or claims to sue.

8th. That there is no equity in said bill.

9th. That this suit is not prosecuted by the real party in interest nor does it appear from the allegation of said bill that the same was instituted at the request of such person in whose behalf complainant claims to sue.

Wherefore, the said defendants pray the judgment of this Honorable Court as to whether they shall plead further to the said Bill of complaint, and pray that they[—]hence dismissed with their costs and charges in this behalf most wrongfully sustained.

A. W. ABRAMS and
IOWA & OKLAHOMA MINING CO.,
Defendants.
S. C. Fullerton,
their solicitor.

Endorsed: No. 1113. Equity United States of America. vs. A. W. Abrams, et als Defendants. Demurrer of A. W. Abrams and the Iowa and Oklahoma Mining Co. Filed Oct. 4, 1909. L. G. Disney, Clerk U. S. Circuit Court Eastern District Okla. S. C. Fullerton, Solicitor for A. W. Abrams and I. & O. Min-
41 ing Co.

And thereafter on the 2nd day of November, 1909, the parties filed stipulation waiving the formal setting down for hearing the demurrers herein.

(Said stipulation is in words and figures as follows:)

42 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
No. 1113. vs. Equity.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and the Iowa and Oklahoma Mining Company, Defendants.

Stipulation.

It is hereby stipulated and agreed by and between Paul A. Ewert, attorney for the plaintiff, and J. J. Bulger, attorney

for Charles F. Noble, John M. Cooper and A. J. Thompson, defendants in the above entitled action and S. C. Fullerton, attorneys for A. W. Abrams and the Iowa and Oklahoma Mining Company, defendants in the above entitled action, and A. S. Thompson and V. E. Thompson, attorneys for themselves that the demurrers interposed in the said action shall be brought on for hearing without notice or formal setting down upon the docket, before Ralph E. Campbell, Judge of the said Court at Muskogee, on the 2nd day of November, 1909, at ten o'clock or as soon thereafter as the same can be heard
43 by the court.

Dated this 2nd day of November, 1909.

PAUL A. EWERT,
Attorney for Complainant.

J. J. BULGER,
Attorney for Charles F. Noble, John M. Cooper and A. J. Thompson, defendants.

S. C. FULLERTON,
Attorney for A. W. Abrams and Iowa and Oklahoma Mining Company, defendants.

A. S. THOMPSON,
Attorney for himself.

V. E. THOMPSON,
Attorney for himself.

Endorsed: Equity #1113. United States of America, Complainant, vs. A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and the Iowa and Oklahoma Mining Company, defendants. Filed Nov. 2, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla. Stipulation for hearing the arguments on the demurrers of the defendants before Judge Ralph E. Campbell at Muskogee, November 2nd, 1909.

44 And thereafter on the 2nd day of November, A. D. 1909, the same being one of the days of the regular Chickasha, 1909 term of the United States Circuit Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee as and for the Chickasha term thereof. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following, to-wit:

United States of America
No. 1113. vs. Equity.
A. W. Abrams, et al.

This cause coming on to be heard upon the Demurrer to the Bill of Complaint, after hearing the argument of the Counsel, the Court not being sufficiently advised in the premises, orders this cause submitted on briefs, both sides being allowed 30 days to file their briefs. The Plaintiff being given 15 days after service by the Defendant to reply to the brief of the Defendants.

45 And thereafter on the 16th day of July, A. D. 1910, the same being one of the days of the regular McAlester 1910 term of the United States Circuit Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee as and for the McAlester term thereof. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following, to-wit:

United States of America, Complainant,
No. 1113. vs.
A. W. Abrams, Defendant.

Now on this day a hearing was had upon the demurrer of the defendants to the bill of complaint herein. After argument of counsel, the Court not being sufficiently advised in the premises, said demurrer was taken under advisement.

46 And thereafter on the 19th day of September 1910, the Court filed his opinion on the demurrers heretofore heard herein.

(Said opinion being in words and figures as follows)

47 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
No. 1113. vs. Equity.
A. W. Abrams, et al., Defendants.

CAMPBELL, D. J.

In March, 1893, the National Council of the Quapaw Tribe of Indians, owning lands in what is now northeastern Oklahoma, passed an act providing for the allotment of said lands in severalty to the individual members of the tribe, subject to Congressional approval and rules and regulations to be prescribed by the Secretary of the Interior. By Act of March 2, 1895, (28 Stat. 907), it was provided:

"That the allotments of land made to the Quapaw Indians, in the Indian Territory, in pursuance of an Act of the Quapaw National Council, approved March 23rd, 1893, be and

the same are hereby ratified and confirmed, subject to revision, correction and approval by the Secretary of the Interior; Provided, However, That any allottee who may be dissatisfied with his allotment shall have all the rights to contest the same provided for in said Act of the Quapaw National Council subject to revision, correction, and approval by the Secretary of the Interior. And the Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith; Provided, That said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents: And Provided Further, That the surplus lands on said reservation, if any, may be allotted from time to time, by said tribe to its members, under the above entitled act;"

On September 26th, 1896, pursuant to said act of Congress, a patent for the land involved in this case was issued
48 to Charley Quapaw Blackhawk, a member of said tribe, with habendum clause as follows:

"Now, Know Ye, That the United States of America, in consideration of the premises, and in conformity with the provisions in said Act of Congress approved March 2, 1895, the Order and Schedule of allotment aforesaid, Has Given and Granted, and by these presents Does Give and Grant unto the said Charley Quapaw Blackhawk, and to his heirs, the said tract above described; but with the stipulation and limitation contained in the aforesaid Act, that the land embraced in this patent shall be inalienable for the period of twenty-five years from and after the date hereof; To Have And To Hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Charley Quapaw Blackshaw, and to his heirs forever; Provided, as aforesaid, that said tract shall be inalienable for the period of twenty-five years."

On June 7, 1897, (30 Stat. 72), Congress further provided:

"That the allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees and tenants shall have the right to employ such assistants, laborers and help from time to time as they may deem necessary; Provided, That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee can not improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms

and conditions as shall be prescribed by him. All acts and parts of acts inconsistent with this are hereby repealed."

This is a suit by the United States to cancel certain lease contracts assigning royalties thereunder, entered into by the allottee with the various defendants. Demurrers are interposed by the defendants on the ground that the government has no such interest in the action as will entitle it to maintain the bill, and that there is no equity in the bill. If
49 from the bill it appears that any of the alleged contracts or leases are in violation of the conditions or limitations imposed by Acts of Congress, under which the allottee has taken his allotment, then the complainant has such interest as entitles it to maintain this action. United States vs. Allen, 179 Fed. 13. Do the leases or contracts sought to be canceled violate the provisions of such acts of Congress?

On June 11th, 1902, the allottee leased his allotment to the defendant, Abrams, for mining purposes for the term of ten years for a cash payment of ten dollars, and a royalty of five per cent. of the market value, at the place mined or produced, of all mineral produced, except gas, for which a royalty of forty dollars per annum for each paying well was to be paid. The five per cent. royalty provided for, was to be paid monthly, and pending such operation as would result in a royalty exceeding twenty dollars per annum, the lessee agreed to pay a minimum annual royalty of twenty dollars. The complainant concedes the foregoing lease to be a valid lease, and contends that it is still in force, and that all subsequent leases and contracts are invalid.

On August 13, 1903, the foregoing lease was assigned by Abrams to the defendant, the Iowa & Oklahoma Mining Company.

The bill further alleges that on August 24, 1903, the allottee, and said Abrams, entered into another mining lease contract for the term of ten years from date thereof, covering the same land, in consideration of a cash payment of eighteen dollars, and royalty of five per cent. on the output, and
50 a minimum annual royalty of twenty-one dollars. This contract contains this clause:

"All leases or parts of leases heretofore made are by mutual consent canceled, annulled, and abrogated."

It appears that on November 2, 1904, Abrams assigned the last mentioned lease to the Iowa & Oklahoma Mining Company.

It is further alleged that on March 25, 1905, the allottee executed a mining lease on the same property to L. C. Jones and A. J. Thompson, for the term of ten years, for a cash bonus of ten dollars and a five per cent. output royalty. This lease has this clause:

"Subject to prior mining lease executed by said first party January 1st, 1902, unto A. W. Abrams."

On July 31, 1905, the lessee, Jones, assigned his interest in said lease to Thompson.

The bill further alleges that on April 4, 1905, the allottee leased his said allotment to the said Iowa & Oklahoma Mining Company, for mining purposes, for a term of ten years from date, for a cash bonus of twenty-five dollars and five per cent. output royalty, forty dollars per annum for each gas well, and a minimum annual royalty of twenty-one dollars. No reference is made in this lease to any former leases.

It is further alleged that on the 22nd day of May, 1906, the allottee leased his said allotment to the said Iowa & Oklahoma Mining Company, for mining purposes, for the term of ten years from date, for a cash bonus of twenty-five dollars and five per cent. output royalty, forty dollars per annum for each paying gas well, and a minimum annual royalty of twenty-one dollars. The last mentioned lease also contains this provision:

51 Provided, that it is expressly understood and agreed by and between the parties hereto, that the execution and delivery and acceptance of this lease shall not in any manner be construed as a waiver or relinquishment by the lessee of any rights, title, interest or claim which it now holds, [own] or enjoys under and by virtue of prior leases held by it upon the lands above described, which leases are recorded within the office of the Deputy Clerk and Ex-officio Recorder in and for the First Recording District of Indian Territory, at Miami, in Book 'Q', at page 558, in Book 'S' at pages 55 and 177, and this lease and all former leases above referred to shall run concurrently; that it is expressly declared that no merger of the leases above referred to into each other or into this lease is contemplated by the execution of this lease, and that the said party of the second part may elect under which of the leases it holds upon the lands above described that it will operate and make payments to said first party, and that the payments and performances by said second party under either of the leases it holds upon said lands shall be in full payment and satisfaction of all requirements and conditions set forth in said several

leases held by it upon said land for the term of said respective leases above referred to,"

"(The foregoing clause constitutes a part of the written terms and conditions of a certain mining or business lease executed by Charley Quapaw Blackhawk to The Iowa & Oklahoma Mining Company of Baxter Springs, Kansas, dated May 12th, 1906, upon the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of Sec. 32, Twp. 29, R. 24, Quapaw Reservation, Ind. Ter., and is attached to and made a part thereof.)"

It is further alleged that on July 28th, 1906, the allottee made a mining lease to the said Iowa & Oklahoma Mining Company, covering his said allotment, for the term of twenty years from date, for a cash bonus of twenty-one dollars, five per cent. output royalty, forty dollars per annum for each paying gas well, and a minimum annual royalty of twenty-one dollars. The last-mentioned lease has this provision:

52 "Provided, that it is expressly understood and agreed by and between the parties to this lease that this lease and those certain mining leases held by said second party and recorded in the office of the Deputy Clerk and Ex-officio Recorder in and for the First Recording District, Indian Territory, in Book Q, P. 558, Book 'S' pp. 55 and Book 'S' page 177 and Book 'G' page 296-297, shall run concurrently until the expiration of the said leases respectively; and that no waiver, relinquishment or forfeiture of any of the rights or interests now held by said second party under the prior leases is intended by the execution, delivery and acceptance of this lease, and that no merger shall be effected of said prior leases, or any of them, because of the execution, delivery and acceptance of this lease; also that second party shall have the right to elect under which of said leases it will operate or hold said lands, and that payments or performances of the terms and conditions of any of the said leases shall be in full payment and satisfaction of all terms and conditions of like in all leases held by it upon said lands."

It is alleged in the bill that the allottee was born in 1835. If so, he was between sixty and seventy years of age when most of the leases were made and seventy-one when the last one was made. It is alleged that he is unable to read or write or understand intelligently the English language; that he was old and infirm, and wholly incompetent of transacting business, and that defendants in the procurement of the leases sought to be canceled, fraudulently took advantage of said allottee's age and incapacity. It does not appear, however, that his condition has been brought to the attention of the Secretary of the Interior, pursuant to that proviso in the leasing act of 1897,

authorizing the Secretary to lease lands of incompetent Indians upon such terms and conditions as he might prescribe, and in view of the admission in the bill that the first lease was a valid lease, it appears that complainant does not contend
53 that the allottee could not or should not have availed himself of the leasing provisions of the act preceding the proviso, but does contend that either because of the said fraud practiced upon him or the illegality of subsequent lease, because violating the provisions of the act, the government may maintain this suit.

The Act of Congress granting authority to lease for mineral purposes, contained one limitation, to-wit, that the term should not exceed ten years. A lease for a longer term would be invalid, and hence the lease of July 28th, 1906, to the Iowa and Oklahoma Mining Company, for twenty years, is invalid, and should be canceled. The law makes no provision as to the amount of consideration that shall be paid, or any other terms, except as to duration. No supervision of the contract is provided for by the Secretary of the Interior, or any agent of the government. It appears that Congress while still imposing the general condition against alienation for twenty-five years, has seen fit to modify that to the extent of vesting in the allottees the right, on his own responsibility, to enter into lease contracts for a limited term. No doubt Congress conceived that it would be for the welfare of the Indian to take upon himself this limited responsibility regarding his land. At the expiration of the twenty-five years term, unless further extended, he would have absolute control. The right in the meantime to make the limited lease-contracts provided for, bringing him into contact with others in a business way, it was no doubt conceived, would enable him to reap some benefit from his allotment in the meantime, other than he might gain by his own labor thereon, and accustom him to business dealings, preparatory for the
54 ultimate absolute control of his property. The allottee in this case is a citizen of the United States and of the State of Oklahoma (General Allotment Act, 24 Stat. 388, as amended, 31 Stat. 1447; Oklahoma Enabling Act, 34 Stat. 267.) If in the making of any mineral lease contract, running for a lawful term, he is overreached in some fraudulent manner, relating to the consideration or other feature of the lease, such as would entitle any citizen to maintain an action in court for legal redress, he has such right of action, which he may prosecute in the proper court in his own name. It is held in United States vs. Allen, supra, that a deed or lease procured in violation of the Acts of Congress imposing restrictions upon alienation, as, for instance, an attempted sale of inalienable land or

an attempted lease for a longer period than the law provides, is such violation of the governmental policy involved in the making of such allotments as entitle the government, in its own name, to sue for the cancellation of such instruments. In such case there is a clear violation of conditions imposed by Congress as to alienability. Where, however, as in this case, Congress has extended the right to lease with no condition except that for a particular purpose the term shall not exceed a certain number of years, if the lease is expressly for the purpose contemplated in the Act, and does not exceed the term allowed, I can conceive in the act permitting leasing no governmental policy, either express or implied, which would enable the government to maintain an action in its own name to cancel such lease. In making the allottee a citizen and in vesting him with power to lease for a particular purpose and term for such consideration as might be agreed upon between him and his lessee, I think it was the intention of Congress that in all respects, save as to the purposes, which must be either grazing, farming or mineral, and the term, which must not exceed a prescribed period, the allottee is clothed with just as full and complete power to lease his land as his white brother, and if, though the lease be for a lawful term and purpose, he is imposed upon by the lessee in regard to some other feature in such way as would give a white citizen a right of action for legal redress, then he and not the government must bring the suit. The mere fact, therefore, that by fraud the lessee may have secured a lease for a manifestly inadequate consideration, would not entitle the government to sue if it appears to be made for a lawful purpose and term.

In my opinion, Congress intended that within the limitations as to purposes and term, the allottee should exercise the same independent right to lease his property and enjoy the proceeds thereof that the law gives to other citizens. And in lieu of the governmental supervision thus partially withdrawn, gave him the status of a citizen and access to a forum where, like any other citizen, he could redress his wrongs. I believe that it was the intention of Congress that within the limitations mentioned this right of disposal of his property was by leasing granted as a means of affording him that experience in business affairs necessary to enable him to eventually handle his property without any restrictions whatever. This is consistent with the purpose manifested by Indian legislation of recent years to hasten, as much as may be, consistent with his welfare, the time when the Indian in this state shall have the same rights of disposition of his property as his white neighbor exercises over his. Hence the absolute supervision so long exercised by Congress over

the Indians, keeping them a people apart from other races, dependent and incapable, is gradually being withdrawn, and while it is the duty of the courts to recognize the existence of such supervision wherever it does not appear to have been withdrawn, it is equally their duty to recognize in the Indian that measure of independence and equality under the law with his white brother which the acts of Congress, from time to time, indicate that body intended the Indian should have, bearing in mind, of course, that wherever an Act under consideration is fairly capable of more than one construction, that construction should be given most favorable to the Indian.

57 Now, turning to the leases in question. The first one, that of January 11, 1902, is conceded to be a valid lease, being for a lawful purpose and term, and its cancellation is not sought.

The second one, of August 24, 1903, to the same lessee, expressly provides that all leases theretofore made are, by mutual consent, canceled, annulled, and abrogated. It is for a lawful purpose and term. Does the fact of a former lease, or assignment thereof, disqualify the parties from making this lease? Certainly if the allottee could make the former lease, he could agree with the lessee that it might be canceled and annulled. I cannot agree with the contention that, having made the lease for the term of ten years, the allottee's hands are tied, and he cannot enter into an agreement modifying or canceling the first lease, during its term. But for the assignment to the Iowa & Oklahoma Mining Company, whereby that company had acquired rights under the first lease, I am of the opinion that this second lease would have annulled the first lease, and would have given the lessee the same rights thereunder as if no former lease had been made.

Passing to the lease of March 25, 1905, to Jones and Thompson, this lease was for a lawful purpose and period. It was made subject to the first Abrams lease. It does not appear that the lessees Jones and Thompson are in any way connected with Abrams or the Mining Company. The question is presented whether the allottee may while he has one outstanding lease, make another lease to another lessee, which does not exceed the lawful term, so that the second lessee may
58 enjoy that portion of his term beyond the termination of the first lease. Such an agreement might be made between white persons and so long as such lease is for one of the purposes provided in the Act and not for a longer term than that prescribed, the term beginning with or near the date of the lease, I see no reason why it may not be validly

made by the allottee. It will be noted that the lease to Jones and Thompson is to run from "date hereof until March 25th, 1915,"—ten years; so that there is not presented the case of an overlapping lease which is to begin to run in the future and the term of which, considered with the term of a prior existing lease, amount together to a longer time than the allottee is permitted to tie up his land by lease. Whitham vs. Lehmer, 98 Pac. 351. I think the Jones and Thompson lease was at the time of its execution, so far as is shown by the bill, a valid lease, subject to the unexpired term of any valid existing lease previously made by the allottee. If during the existence of a ten year lease, the allottee should make a second lease to the first lessee or to another for a term of ten years, to begin at the expiration of the first term, that, I think, would be a violation of the law, for the unexpired term and the term of the second lease would, together, amount to more than ten years. But where, as in this case, the ten year term of the second lease runs from the date of its execution, so that the land is not tied up by either or both leases for a longer term in the future than the law prescribes, there is no violation of the leasing act.

Now, taking up the lease of April 4, 1905, to the Iowa & Oklahoma Mining Company: This lease is for mining
59 purposes and is limited to ten years. There is, therefore, nothing on its face to suggest invalidity, and were this the first appearance of this lessee, it would be in the attitude of the lessees Jones and Thompson, just considered. But it appears that at the time this lease was made, this lessee had taken from the lessee Abrams an assignment of each of the leases he had taken from the allottee. Assuming that one or the other of the Abrams leases was valid and in force and assignable, then the Mining Company owned and was entitled to enjoy the unexpired term of such lease. In either event, such unexpired term was still running when this lease was made. If by the terms of this lease the former leases under which the Mining Company claimed had been expressly annulled, then there would be presented the question considered in relation to the second Abrams lease. Does the execution and acceptance of this lease, without any mention of former leases, operate to cancel and annul such former leases?

"The acceptance by the tenant of a new lease during the term of the first lease, constitutes a surrender, by operation of law, unless the surrender would be contrary to the intention of the parties, and it is immaterial whether there was any actual surrender of the old lease."

24 Cyc. 1369.

Edwards vs. Hale (W. Va.), 16 S. E. 487, it is said:

'aken alone, discarding the fact that a tenancy from year to existed between these parties when it was made, it does a lease for a specific term by Edwards to Hale. Hale l not in its face deny that he became Edwards' tenant in property for a certain term, yielding certain rent. But tenancy from year to year existed at the time, the question id it supplant that tenancy? Roberts, Frauds, p. 254, states the law thus: 'A surrender in law of a lease in possession is implied in the acceptance of a new lease from the reversioner; for, if the lessee accept a new lease his lessor, he admits and affirms his lessor's ability to e such new lease, which could not be done by him if the old stood in his way.' Same doctrine in Wood, Landl. & Ten. 2; 2 Tayl. Landl. & Ten. p. 512; 2 Lomax, Dig. 105. 'Where, ing a lease, a second lease is made, containing stipulations nsistent with the former lease, the latter shall prevail; the mption being that a surrender of the old one was intend- Wood, Landl. & Ten. p 492."

also, Donkersley vs. Levy, 38 Mich. 54; Enyeart vs. Davis, o.) 22 N. W. 449; Leyman vs. Abeel, 16 Johns 30.

is my opinion that the lease of April 4, 1905, to the Min- Company, operated to cancel and annul the former lease, nally given to Abrams, and assigned to the Mining Com- . As to the respective rights of Thompson, holding under Thompson and Jones lease, on the one hand, and the Min- Company, under the lease of April 4, 1905, on the other, is a question not involved here. Each provides for a lty of five per cent. of the ore produced, and I find nothing ither lease which is violative of the act permitting such s. Taking up the lease to the Iowa & Oklahoma Mining pany, dated May 12, 1906, it will be noted that in this lease, attempted to continue in force all former leases to this pany, either as lessee or assignee, as well as create a new , and so that all may be considered as running concurrent- ne Mining Company reserving the right to elect at any time r which lease it will operate and make payment, and that nent under one shall amount to payment under all. That lpably an effort to combine the terms and conditions of the several leases into one lease, to cover the combined term of all, amounting to more than ten years, and is in- valid.

ne lease of date July 28, 1906, to the Iowa & Oklahoma Min- Company, is, as we have seen, for the term of twenty years, therefore invalid.

If the conclusion that the lease to the Mining Company, of April 4, 1905, operated to cancel and annul the former leases which it held as assignee, being the leases originally made to defendant Abrams, is correct then by the contract of the parties, the Abrams leases are of no effect, and a decree cancelling them would serve to clear the record. The leases of May 12 and July 28, 1906, to the Iowa & Oklahoma Mining Company, are invalid, and should be canceled. The demurrers of the defendant, Abrams, and the Iowa & Oklahoma Mining Company, will therefore, be overruled. The demurrer of defendant A. J. Thompson, will be sustained.

62 On August 16, 1902, the allottee entered into a contract with Charles F. Noble, purporting to "grant, bargain, sell, assign, transfer and set over" to said Noble all his right, title and interest in and to the royalty, rental, and proceeds of the mining lease executed by the allottee to defendant Abrams under date of January 11, 1902. We have seen that this lease provided for a cash payment of ten dollars, at date of execution and "a sum of money equal to five per centum of the market value at the place mined or produced" of all substances to be mined, except gas, for which lessee was to pay forty dollars per annum for each paying well; and further provided for a minimum annual royalty of twenty dollars. The royalty was to be paid in money, based upon a per centum of the market value of the ore produced. A one-half interest in this contract was later assigned by defendant Noble to defendant Cooper. It is further alleged that on February 21, 1906, the allottee entered into a contract with defendants A. S. and V. E. Thompson, whereby he assigned to them as a fee for their services in litigation arising out of the assignment to Noble, one-half of the royalties recovered by the allottee in such litigation. The government seeks to cancel both the foregoing contracts assigning royalty, on the ground that the allottee cannot assign such royalties. The defendants have demurred to the bill, challenging the capacity of the government to sue, and asserting want of equity in the bill. The bill concedes that the lease upon which the royalties are attempted to be assigned, accrue, is a valid lease. The law contemplates that the moneys representing the royalties arising therefrom shall become the absolute property of
63 the allottee, to be disposed of as he may see fit. No provision is here made, as is done in many cases, by which payment shall be made to the Indian Agent, and by him disbursed. Such a provision would have manifested an intention to extend the supervision of the government over the proceeds of these leases; the absence of such provision, on the other hand, manifests a Congressional intent that the proceeds of such leases shall be at the disposal of the Indian.

It is his to handle as he may see fit. If it is fraudulently taken from him, he has his remedy like any other citizen, to recover it. It appears from the recitations in the assignments to the defendants, Thompson, that he invoked that remedy through them as counsel, and assigned to them as their fee a portion of the royalties recovered. I can conceive no reason why such assignments of royalties cannot be legally made. It is true the Indian may make most improvident contracts relating to such assignments, but Congress has seen fit to entrust him with the disposal of the moneys accruing from these royalties, and if, for a consideration satisfactory to himself, he sees fit to realize upon this fund in advance, by assigning it, I can conceive nothing in the transaction violating any governmental policy expressed by any legislation relating to these Indians, which has been brought to my attention. In the matter of receiving and disposing of these royalties, as he may see fit, as in the matter of agreeing upon the consideration which shall be paid to him for a lease, for a lawful purpose and term, Congress has seen fit to place the Indian upon his own responsibility and I cannot escape the conviction
64 that Congress in so doing intended that, to that extent, he should take his place as a citizen of the United States and of the state, together with all other citizens of whatever race or color.

The demurrers of the defendants Noble, Cooper, and A. S. and V. E. Thompson, are, therefore, sustained.

RALPH E. CAMPBELL,
Judge.

65 And thereafter on the 5th day of December, A. D. 1910, the same being one of the days of the regular Chickasha 1910 term of the United States Circuit Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee as and for the Chickasha term thereof. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following, towit:

In the Circuit Court of the United States for the Eastern District of Oklahoma.

The United States of America, Complainant,
No. 1113. vs. Equity.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson and The Iowa & Oklahoma Mining Company, Defendants.

Order Overruling Demurrers of the Defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, and Sus-

taining the Demurrers of Defendants, Charles F. Noble, John M. Cooper, A. S. Thompson, A. J. Thompson and V. E. Thompson.

Journal Entry.

On this 5th day of December, 1910, on consideration of the demurrers to this bill filed by the defendants, A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, which were heretofore argued, submitted and by the Court taken under advisement, the Court now finds that the Complainant has such an interest in the matters involved in this case, and that there is such equity in the bill as entitles it to maintain this action against the Defendants A. W. Abrams, and The Iowa & Oklahoma Mining Co., but that the Complainant has no such interest in the matters involved in this case, and that there is no such
66 equity in the bill as entitled it to maintain this action against the defendants, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson and V. E. Thompson,

It is the judgment of the Court that for the foregoing reasons that the demurrers interposed by the Defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, should be overruled, and that the demurrers interposed by the Defendants, Charles F. Noble, John M. Cooper, A. S. Thompson, A. J. Thompson and V. E. Thompson, should be sustained.

It Is Therefore Ordered, that the respective demurrers interposed by A. W. Abrams and The Iowa & Oklahoma Mining Company be overruled at the cost of the said Defendants and that the respective demurrers interposed by the defendants Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson and V. E. Thompson, be sustained.

To this order and ruling of the Court the several Defendants and the Complainant duly excepted, the exception being allowed by the Court, and the Defendants and Complainant given until the rule day in February 1911, in which to plead.

RALPH E. CAMPBELL,
Judge of the Circuit Court for the
Eastern District of Oklahoma.

67 And thereafter on the 2nd day of January, 1911, the Complainant by Paul A. Ewert, Special Assistant to the Attorney General filed Petition for Order allowing Appeal and Assignment of Errors.

(Said petition for order allowing Appeal, assignment of error and order allowing Petition for appeal, are in wods and figures as follows).

68 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,

vs.

A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Co., Defendants.

Petition for Appeal.

To the Honorable Ralph E. Campbell Judge of the District Court for the Eastern District of Oklahoma;

The above named complainant feeling itself aggrieved by the decree made and entered in this cause on the 5th day of December, 1910, sustaining the demurrers of the defendants, Charles F. Noble, and John M. Cooper, and A. S. Thompson and V. E. Thompson, and the defendant, A. J. Thompson, does hereby appeal from said order and decree to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors, which is herewith filed, and it prays that its appeal be allowed and the citation issue as provided by law, and that a transcript of the records, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at the City of St. Louis, in the State of Missouri, U. S. A.

GEO. W. WICKERSHAM,
Attorney General of the United States.

PAUL A. EWERT,
Special Ass't to the Attorney General
Solicitors for the Complainant.

The foregoing petition this day presented in open court, is granted, and the appeal allowed.

Dated at Muskogee, Oklahoma, this 2nd day of January, 1911.

RALPH E. CAMPBELL,
Judge.

Endorsed: Equity No. 1113, United States of America, Complainant vs. A. W. Abrams, Charles F. Noble, et al., De-

fendants. Petition for Appeal. Filed In open Court, Jan. 2, 1911, L. G. Disney, Clerk. U. S. Circuit Court Eastern Dist. Okla.

69 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
No. 1113. vs. In Equity.
A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company Defendants.

Assignment of Errors.

To the Honorable Ralph E. Campbell Judge of the District Court for the Eastern District of Oklahoma;

On this 2nd of January 1911, in open Court, comes the Complainant by its solicitor, Paul A. Ewert, and says that the Order and Decree entered in the above entitled cause on the 5th day of December, 1910, is erroneous and unjust to the complainant in this, to-wit:

First: The Court erred in sustaining the demurrers interposed by the Defendants, Charles F. Noble and John M. Cooper and A. S. Thompson and V. E. Thompson, and the Defendant, A. J. Thompson, and in dismissing the Bill as to them.

Second: The Court erred in not overruling the demurrers interposed by the said Defendants Charles F. Noble and John M. Cooper, and A. S. Thompson and V. E. Thompson, and the Defendant, A. J. Thompson.

Third: The Court erred in not holding that each and all of the mining leases set forth in Paragraphs V and VI were unlawful, and made, executed and delivered contrary to
70 and in violation of the express provisions of the Act of Congress approved March 2, 1895, (28 Stats. at Large, page 907), and of the Act of Congress approved June 7, 1897, (30 Stats. at Large, page 72).

Fourth: The Court erred in holding that the mining lease set forth in Paragraph V of the Bill of Complaint was at the time of its execution and delivery a lawful and valid instrument.

Fifth: The Court erred in holding that the mining lease set forth in Paragraph VI of the Bill of Complaint was at the time of its execution and delivery a lawful and valid mining lease.

Sixth: The Court erred in holding that the United States of America could not maintain a suit in its own name for the purpose of setting aside, upon the ground of fraud and misrepresentation and inadequacy of consideration, the mining leases alleged in the Bill of Complaint to have been procured from the Indian Allottee, Blackhawk, by the respective lessees for inadequate consideration, and by misrepresentation and fraud practised upon him.

Seventh: The Court erred in not holding that the allottee, Charley Quapaw Blackhawk, exhausted his right to make further leases during the period of ten years from January 11th, 1902, when he made, executed and delivered to the Defendant, A. W. Abrams, the mining lease set forth in Paragraph IV of the Bill of Complaint, leasing to the said A. W. Abrams, the lands mentioned in the said Bill of Complaint for the full term of ten years from the 11th day of January, 1902.

Eighth: The Court erred in holding that the giving of a subsequent lease to the same lessee, by the Indian Allottee, Blackhawk, had the effect of cancelling all prior leases given to the same lessee, or to another party and assigned to said [—]

71 Ninth: The Court erred in holding that the assignment of royalties accruing under the lease made under date of January 11, 1902, to the defendants, Charles F. Noble by the Indian allottee, Blackhawk, as alleged in paragraph XI of the Bill of Complaint was lawful.

Tenth: The Court erred in not holding that the assignment of royalties made by Charley Quapaw Blackhawk to the defendant Charles F. Noble, by an instrument designated as an assignment contract, as alleged in paragraph XI of the Bill of Complaint, was not lawful and invalid.

Eleventh: The Court erred in holding that the assignment made by the allottee, Charley Quapaw Blackhawk, to the Defendant, A. S. Thompson and V. E. Thompson, as alleged in Paragraph XII of the Bill of Complaint, was a valid and lawful assignment to a portion of the royalties accruing to the said allottee, Blackhawk, under the lease made by him to A. W. Abrams under date of January 11, 1902, as alleged in paragraph IV of the Bill of Complaint.

Twelfth: The Court erred in not declaring to be unlawful and invalid that certain instrument designated as an assignment contract wherein and whereby the allottee, Charley Quapaw Blackhawk, sold, assigned and transferred unto the Defendants, A. S. Thompson and V. E. Thompson, a one-fourth

interest in and to all of the royalties accruing under the lease made by said Allottee, Blackhawk, to A. W. Abrams under date of January 11, 1902.

Wherefore, the Complainant prays that the said order and decree of the court be reversed and that the Circuit Court be instructed to enter such decree as will give the Complainant the relief prayed for in this Bill.

GEO. W. WICKERSHAM,
Attorney General of the United States.
PAUL A. EWERT,
Special Ass't. to the Attorney General.
Solicitors for the Complainant.

72 Endorsed: Equity No. 1113. United States of America, Complainant, vs. A. W. Abrams, et al., Defendants. Assignment of Errors. Filed in open Court Jan. 2, 1911. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

73 In the Circuit Court of the United States for the Eastern District of Oklahoma.

United States of America, Complainant,
No. 1113. vs. In Equity.
Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and V. E. Thompson, et al., Defendants.

Citation in Appeal.

United States of America to Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson and V. E. Thompson, Defendants in the above entitled action—Greeting:

You are hereby notified that in a certain cause in equity in the United States Circuit Court, in and for the Eastern District of Oklahoma, wherein the United States of America is Complainant, and Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson and V. E. Thompson are defendants, an Appeal has been allowed the Complainant therein to the Circuit Court of Appeals of the United States for the Eighth Circuit sitting at St. Louis, Missouri, United States of America.

You are hereby cited and admonished to be and appear in said Court at the City of St. Louis, Missouri, Thirty (30) days after the date of this citation, to show cause, if any there be, why the Order and Decree appealed from should not be corrected, and speedy justice done the parties in that behalf.

Witness, the Honorable Ralph E. Campbell, Judge of the United States Circuit Court for the Eastern District of Oklahoma, this 2nd day of January, 1911.

RALPH E. CAMPBELL,
United States Circuit Judge.

Equity No. 1113. United States of America, Complainant, vs. Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, V. E. Thompson, et al., Defendants. Citation in Appeal. Due and personal service of the within citation in Appeal is hereby acknowledged this 6th day of January, 1911. J. J. Bulger, Attorney for Chas. F. Noble, John M. Cooper, and A. J. Thompson. V. E. Thompson, Attorney for Defendant, V. E. Thompson. A. S. Thompson, Attorney for Defendant, A. S. Thompson. United States Circuit Court, Eastern Dist. Okla. Filed Jan. 17, 1911. L. G. Disney, Clerk.

74 United States of America,
Eastern District of Oklahoma—ss.

I, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the foregoing is a full, true and correct transcript of the record and proceedings had in the case of United States vs. A. W. Abrams, et al., together with the original citation, as the same remains of record and on file in my office.

Seal
U. S. Circuit Court
Eastern District
Oklahoma.

Witness my hand and the seal of said Court, at Muskogee, Oklahoma, this 20th day of January, A. D. 1911.

L. G. DISNEY, Clerk.
By H. E. Boudinot, Deputy.

Filed Jan. 24, 1911. John D. Jordan, Clerk.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 3551.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

PETITION FOR WRIT OF CERTIORARI AND PROCEEDINGS THEREON.

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1 Be it Remembered, That on the eighth day of May, A. D. 1911, a suggestion of diminution of record and a petition for a writ of certiorari was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is Appellant and Charles F. Noble, et al., are Appellees, which said petition for writ of certiorari and the exhibits attached thereto, are in words and figures following, to-wit:

2 In the United States Circuit Court of Appeals, Eighth Circuit.

United States of America, Appellant,
No. 3551. vs.
Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson and V. E. Thompson, Appellees.

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

The petition of the United States of America, Appellant in the above entitled case, respectfully shows to this honorable Court that it filed in the Circuit Court of the United States for the Eastern District of Oklahoma a certain Bill in Equity on, to-wit: the 26th day of July, 1909, entitled United States of America, Complainant, vs. Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, Vern E. Thompson, L. C. Jones, A. W. Abrams and The Iowa & Oklahoma Mining Company, Defendants.

That thereafter the said defendants, Charles F. Noble John M. Cooper, A. J. Thompson, A. S. Thompson and Vern E. Thompson, respectively interposed demurrers to the Bill of Complaint, which demurrers came on to be heard on the 5th day of December, 1910, on which day the Judge of the said Court, the Honorable Ralph E. Campbell, made an Order sustaining the demurrers so interposed by the said defendants,
3 Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson and Vern E. Thompson, and directing that the Bill of Complaint as to them be dismissed.

That thereafter, to-wit: on the 2nd day of January, 1911, the said Complainant, by its solicitor, Paul A. Ewert, Special Assistant to the Attorney General, in due form filed its petition for an order allowing an appeal to the United States Circuit Court of Appeals for the Eighth Circuit together with its assignment of errors, which said petition for appeal was

on the said 2nd day of January, 1911, allowed by the said Court and the appeal ordered.

That thereafter, to-wit: on the 20th day of January, 1911, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, certified to this Court a transcript of the record and proceedings had in the said case as the same appeared of record and on file in his office, which said transcript was on the 24th day of January, 1911, filed in the office of John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

But your petitioner respectfully shows to this Honorable Court that the said transcript as certified to by L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, is not in truth and in fact a full, true and correct transcript of the record of all of the proceedings had in said case, in that there is omitted a portion of the Bill of Complaint as filed in said Court, to-wit: exhibits "A", "B" "C", "D", "E", "F", and "G", "I" and "J", referred to in paragraphs III, IV, V, VI, VII and VIII, XI and XII of the said Bill of Complaint and by express language made a part thereof.

Your petitioner respectfully shows that the said exhibits are necessary and essential to the determination by this Court of the questions involved in this appeal, and prays that
4 an order be made directing that they be made a part of the transcript of the record and be printed and stand as a part of said transcript of the record in this case.

Wherefore, Your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court for the Eastern District of Oklahoma, commanding the said Court to certify and send to this Court forthwith as a part of the transcript of the proceedings in this case had in his Court, the said omitted portions of the Bill of Complaint, to-wit: exhibits "A", "B", "C", "D", "E", "F", and "G", "I" and "J".

Or that the said exhibits hereunto attached, duly certified to by the Clerk below, be admitted as a part of the said record and ordered printed without the issuance of the said writ of certiorari.

PAUL A. EWERT,
Solicitor for Appellant.

State of Missouri.
County of Jasper—ss.

Before me appeared this day Paul A. Ewert, and upon oath says that he is solicitor for the Appellant in the above entitled

action; that he knows of the above proceedings had and that the facts therein stated are true to the best of his knowledge and belief.

Seal
Mary S. Haines,
Notary Public
Jasper County
Missouri

In Testimony Whereof, I have hereunto set my hand and seal this 26th day of April, 1911.

MARY S. HAINES,
Notary Public,
Jasper County, Missouri.

My commission expires May 8, 1913.

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5 The following exhibits to the Bill of Complaint are attached as Exhibits to the foregoing Petition for Certiorari.

Exhibit "A".

The United States of America, To all to Whom these presents shall come—Greeting:

Whereas, There has been deposited in the General Land Office of the United States an order bearing date March 30, 1896, from the Secretary of the Interior, accompanied by a schedule of allotments of land, dated November 15, 1895, from the Commissioner of Indian Affairs, approved by the Secretary of the Interior March 28, 1896, whereby it appears that under the provisions of the Act of Congress approved March 2, 1895, (28 Stats. 907) Charley Blackhawk Quapaw, an Indian of the Quapaw tribe, residing on the Quapaw Reservation in the Indian Territory, has been allotted the following described land, viz:

The Northwest quarter and the Northwest quarter of the southwest quarter of section thirty-two in township twenty-nine north of range twenty-four east of the Indian Meridian in Indian Territory, containing two hundred acres.

Now, Know Ye, That the United States of America, in consideration of the premises, and in conformity with the provisions in said act of Congress approved March 2, 1895, the Order and Schedule of allotment aforesaid, Has Given and Granted and by these presents Does Give and Grant unto the said Charley Quapaw Blackhawk, and to his heirs, the said tract above described; but with the stipulation and limitation contained in the aforesaid Act, that the land embraced in this patent shall be inalienable for the period of twenty-five years from and after the date hereof; To Have and to Hold the same, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, unto the said Charley Quapaw Blackhawk, and to his heirs forever;

Provided, as aforesaid, that said tract shall be inalienable for the period of twenty-five years.

5a In Testimony Whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made Patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

(Seal) By the President: GROVER CLEVELAND,
By M. McKean, Secretary.
L. Q. C. Lamar, Recorder of the General Land Office.

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6 Exhibit "B".

Charley Quapaw Blackhawk
to
A. W. Abrams.

Mining or Business Lease.

This Indenture, Made and entered into this 11th day of January, A. D. 1902, by and between Charley Q. Blackhawk, of the Quapaw Reserve, in the Indian Territory, an allottee of the Quapaw tribe of Indians, party of the first part, and A. W. Abrams, of Baxter Springs, in the State of Kansas, party of the second part, in pursuance of the provisions of an Act of Congress, approved June 7, 1897, (Public Document No. 3, page 11).

Witnesseth: That the said party of the first part, for and in consideration of the sum of Ten Dollars to him paid by the party of the second part, the receipt of which is hereby acknowledged, and in consideration of the rents and royalties, undertakings and agreements hereinafter stated, to be paid and performed by the said party of the second part, successors and assigns, do by these presents, demise and lease unto the said party of the second part, his successors and assigns, the following described tracts or parcels of land, viz:

The northwest quarter and the northwest quarter of the southwest quarter of section thirty-two (32), township twenty-nine (29) North of range twenty-four (24), east of the Indian Meridian, Indian Territory, containing two hundred (200) acres, more or less,

for the term of the years from the date hereof, for the purpose of prospecting and mining for lead, zinc and all and every other

kind of valuable mineral or ore, or fossil, or vegetable substance whatever, with the right to use so much of the surface of said land, and so much of the timber and building stone found thereon as may be properly needed to successfully conduct said prospecting and mining operations; also the right of way over and across said land whereon to construct and operate such line or lines of railroad as may be necessary to carry on and prosecute the objects of this indenture, but reserving the right to go upon and visit said land and mines at such times as may be desired to examine and ascertain the amount of product mined thereon.

In Consideration of which the said party of the second part hereby agrees and binds his executors administrators, assigns, or sub-lessees to pay or cause to be paid to the party of the first part, his executors, administrators or assigns, at the office of the party of the second part a sum of money equal to (5%) five per centum of the market value at the place mined or produced, of all lead, zinc, and all other minerals or substances whatever, which may be mined or removed by the said party of the second part, his executors, administrators, assigns or sub-lessees, from said land herein leased, except gas, which shall be forty dollars per annum for each paying well, and such payments or royalty shall be made on or before the first week of each calendar month during the continuance of this lease, for all ore, minerals, products and substances above named, mined or removed from the land during the calendar month
7 last preceding such date of payment. Provided, However, That in the event the royalties on said lands do not exceed Twenty Dollars per annum, after the year 1902, then the said party, his agent, or assigns, shall pay or cause to be paid to said first party, or his representatives, the sum of Twenty Dollars in the first week of January of each year until the said royalties do exceed Twenty Dollars per annum. When the royalties do exceed Twenty Dollars per annum, royalties only shall be payable. And the said party of the second part further covenants and agrees that he will keep an accurate account of said mining operations, showing the whole amount of ore, etc., mined or removed, and that the party of the first part shall have the right to make such reasonable examination of the books of account as may be necessary to obtain all information desired as to the amount of product mined or removed from said land under this lease. Should said second party fail to comply with the terms of this lease at any time, said first party may give him notice that unless said terms are complied with within thirty days from date of said notice, that said lease shall be declared forfeited, after which said first party may enter upon and take possession of said premises without further notice.

In Witness Whereof, the said parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

(Seal) CHARLEY Q. BLACKHAWK (his mark)

(Seal) A. W. ABRAMS,
Signed and Sealed in the Presence of

H. W. Harley,
George Redeagle.

Northern Judicial District,
Indian Territory—ss:

On this 11th day of January, A. D. 1902, before me Wm. Mayse, a Notary Public, within and for the Northern Judicial District of Indian Territory appeared in person Charley Q. Blackhawk, to me personally well known as the person whose name appears upon the within and foregoing lease, as the party of the first part, and stated that he executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I have hereunto set my hand and official seal as such Notary Public in the Ind. Ter., as aforesaid, on the 11th day of January, A. D. 1902.

WM. MAYSE, Notary Public.
My commission expires Jan. 11, 1905.

For valuable consideration, I do hereby assign, transfer and set over unto the Iowa & Oklahoma Mining Company all my rights, title and interest in and to the within lease.

Signed at Baxter Springs, Kansas, this 13th day of August, 1903.

A. W. ABRAMS.

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8 Exhibit "C".

This Indenture, made and entered into this 24 day of August, A. D. 1903, by and between Charley Q. Blackhawk of the Quapaw Reserve, in the Indian Territory, an allottee of the Quapaw tribe of Indians, party of the first part, and A. W. Abrams, of Baxter Springs, Kansas, party of the second part, in pursuance of the provisions of an Act of Congress, approved June 7, 1897, (Public Document No. 3, page 11),

Witnesseth: That the said party of the first part, for and in consideration of the sum of eighteen Dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, and in consideration of the rents or

royalties undertakings and agreements hereinafter stated, to be paid and performed by the said party of the second part, his successors and assigns do by these presents demise and lease unto the said party of the second part, his successors and assigns, the following described tracts or parcels of land, viz:

The northwest ¼ quarter and the northwest ¼ quarter of the southwest ¼ quarter of section 32 thirty-two, township 29 twenty-nine north of range 24 twenty-four east of Indian Meridian, Indian Territory, containing two hundred (200) acres more or less for the term of ten years from date hereof for the purpose of prospecting and mining for lead, zinc and all and every other kind or kinds of valuable mineral or ore, or fossil or vegetable substance whatever, with the right to use so much of the surface of said land, and so much of the timber and building stone found thereon as may be properly needed to successfully conduct said prospecting and mining operations; also the right of way over and across said land whereon to construct and operate such line or lines of railroad as may be necessary to carry on and prosecute the objects of this indenture, but reserving the right to go upon and visit said land and mines at such times as may be desired to examine and ascertain the amount of product mined thereon.

In Consideration of which the said party of the second part hereby agrees and binds his executors, administrators, assigns, or sub-lessees to pay or cause to be paid to the party of the first part, his executors, administrators or assigns, at office of party of second part a sum of money equal to 5% five per centum of the market value at the place mined or produced, of all lead, zinc, and all other minerals or substances whatever, which may be mined or removed by the said party of the second part, his executors, administrators, assigns or sub-lessees, from said land herein leased, except gas, which shall be forty dollars per annum for each paying well, and such payments or royalty or rent shall be made on or before the first week of each calendar month during the continuance of this lease, for all ore, minerals, products and substances above named, mined or removed from the land during the calendar month last preceding such date of payment, Provided, However, That in the event the royalties on said lands do not exceed twenty-one dollars per annum, after the year 1903, then the said second party, his agent or assigns, shall pay or cause to be paid to said party of the first part, or his representatives, the sum of twenty-one dollars in the first week of July of each year until said royalties do exceed twenty-one dollars per annum. When the royalties exceed twenty-one dollars per annum,
9 royalties only shall be payable. And the said party of the second part further covenants and agrees that he

will keep an accurate account of said mining operations, showing the whole amount of ore, etc., mined or removed, and that the party of the first part shall have the right to make such reasonable examination of the books of account as may be necessary to obtain all information desired as to the amount of product mined or removed from said land under this lease. Should said second party fail to comply with the terms of this lease at any time, said first party may give him notice that unless said terms are complied with within thirty days from date of said notice, that said lease shall be declared forfeited, after which said first party may enter upon and take possession of said premises without further notice.

All leases or parts of leases heretofore made, are by mutual consent cancelled, annulled and abrogated.

In Witness Whereof, the said parties of the first and second part have hereunto set their hands and seals the day and year first above written.

(Seal) CHARLEY Q. BLACKHAWK (by mark)
(Seal) A. W. ABRAMS,

Signed and sealed in the presence of
M. E. McGregor
his
Peter Clabber, X Interpretor.
mark
Eliza McGregor.

County of Cherokee,
State of [Indian Territory] Kansas—ss:

On this 24th day of August, A. D. 1903, before me M. E. McGregor, a Notary Public within and for the County of Cherokee and State of Kansas appeared in person Charley Q. Blackhawk, to me personally well known as the person whose name appears upon the within and foregoing lease, as the party of the first part, and stated he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I have hereunto set my hand and official seal as such Notary Public in the County and State, as aforesaid, on the 24th day of August, A. D. 1903.

(Seal) M. E. McGREGOR, Notary Public.

My commisison expires .....

For valuable consideration I do by these presents assign, transfer and set over unto The Iowa & Oklahoma Mining Com-

pany, all my rights, title and interest in and to the within lease.

Signed at Baxter Springs, Kansas, this 2d day of November, 1904.

A. W. ABRAMS.

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10 Exhibit "D".

Charley Quapaw Blackhawk,)
To) Mining Lease.
L. C. Jones and A. J. Thompson)

This Indenture of Lease, Made this Mar. 25, 1905, by and between Charles Quapaw Blackhawk, a Quapaw allottee, party of the first part and L. C. Jones and A. J. Thompson, parties of the second part,

Witnesseth: That said first party for the sum of $10.00, cash paid and for the other considerations hereinafter stated, does hereby let and lease unto second parties and assigns for prospecting and mining for lead, zinc and other valuable mineral substances, from date hereof until March 25th, 1915, the following described tract of land situated in Quapaw Reserve, I. T., to-wit:

The northwest quarter and the northwest quarter (¼) of the southwest quarter (¼) of section thirty-two (32), in T. 29 of range 24, containing two hundred (200) acres,

hereby giving and granting unto second parties and assigns for said term, the exclusive right and license to prospect and mine said land for lead, zinc and other valuable mineral substances and to prepare for market, remove and sell all lead, zinc and other valuable mineral substances mined thereon; with the right to erect such buildings and place such machinery on said land as second parties, or assigns may deem necessary for efficiently prospecting and mining said land, and prepare for market and disposing of ores mined—with right to remove the same at any time during or within ninety days after termination of this lease; also right of way for roadways and railways and right to use of land for stores, shops and dwellings.

In Consideration Whereof, second parties agree: That will pay unto first parties at the Baxter National Bank at Baxter Springs, Kansas, on Wednesday of each week following sale of ore a royalty of five (5) per centum of all moneys received for ores mined and sold from said land during the preceding week; that they will keep accurate books of account quantities and kinds of ores mined and sold from said lands,

when and to whom sold and the money received therefor, and such books of account shall be open to inspection of first part or agent at all reasonable hours; that all mining operations shall be carried on in a mine like and workmanlike manner.

Subject to prior mining lease, executed by said first party Jan'y. 1, 1902, unto A. W. Abrams.

Dated and signed at Baxter Springs, Kansas, this Mar. 25th, 1905.

CHARLES QUAPAW BLACKHAWK, (by mark)
L. C. JONES,
A. J. THOMPSON.

Witness:
George Redeagle.

11 State of Kansas,
County of Cherokee—ss.

Before me this 25th day of Mar. 1905, personally appeared Charles Quapaw Blackhawk, to me well known, who duly acknowledged the execution of the foregoing lease for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal this 25th day of March, 1905.

(Seal) SAM'L. H. SMITH,
Notary Public.

My commission expires 3/3/06.

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12 Exhibit "E".

L. C. Jones,)
to) Assignment of Mining Lease.
A. J. Thompson.)

For Value Received, I do hereby sell, assign and transfer unto A. J. Thompson all my right, title and interest in, to and under that certain mining lease executed Mar. 25th, 1905, by Charles Qaupaw Blackhawk, unto myself (L. C. Jones) and said A. J. Thompson upon the

N. W. ¼ and the N. W. ¼of the S. W. ¼ of sec. 32, T. 29, R. 24, in Quapaw Reserve, I. T.

said lease being recorded in the office of the Clerk of the U. S. Court at Miami, I. T., in Book "D" at page 548.

Dated and signed at Baxter Springs, Kansas, this July 31st, 1905.

L. C. JONES.

State of Kansas,
County of Cherokee—ss.

Before me this 13th day of July, 1905, personally appeared L. C. Jones, to me well known, who duly acknowledged the execution of the foregoing instrument of writing for the uses and purposes therein set forth.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal this 13th day of July, 1905.

(Seal) SAM'L. H. SMITH,
Notary Public.

My commission expires 3/3/06.

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13 "Exhibit F."

This Indenture, Made and entered into this fourth day of April, A. D. 1905, by and between Charles Q. Blackhawk of the Quapaw Reserve, in the Indian Territory, an allottee of the Quapaw tribe of Indians, party of the first part, and the Iowa & Oklahoma Mining Company of Baxter Springs, Kansas, party of the second part, in pursuance of the provisions of an Act of Congress, approved June 7, 1897, (Public Document No. 3, page 11),

Witnesseth, That the said party of the first part, for and in consideration of the sum of twenty five Dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, and in consideration of the rents or royalties, undertakings and agreements hereinafter stated, to be paid and performed by the said party of the second part, his successors and assigns, do by these presents demise and lease unto the said party of the second part, his successors and assigns, the following described tracts or parcels of land, viz:

The North-west Quarter (N. W. ¼) and the North-west Quarter (N. W. ¼) of the South-west Quarter (S. W. ¼) of Section Thirty-two (32), Township Twenty-nine (29) North Range Twenty Four (24),

east of Indian Meridian, Indian Territory, containing two hundred (200) acres more or less for the term of ten years from the date hereof for the purpose of prospecting and mining for lead, zinc and all and every other kind or kinds or valuable mineral or ore, or fossil or vegetable substance whatever, with the right to use so much of the surface of said land, and so much of the timber and building stone found thereon as may be properly needed to successfully conduct said prospecting and mining operations; also the right of way over and across said land whereon to construct and operate such line or lines

of railroad as may be necessary to carry on and prosecute the objects of this indenture, but reserving the right to go upon and visit said land and mines at such times as may be desired to examine and ascertain the amount of product mined thereon.

In Consideration of which the said party of the second part hereby agrees and binds his executors, administrators, assigns, or sub-lessees to pay or cause to be paid to the party of the first part, his executors, administrators or assigns, at office of party of second part a sum of money equal to (5%) Five per centum of the market value at the place mined or produced, of all lead, zinc, and all other minerals or substances whatever, which may be mined or removed by the said party of the second part, his executors, administrators, assigns or sub-lessees, from said land herein leased, except gas, which shall be forty dollars per annum for each paying well, and such payments or royalty or rent shall be made on or before the first week of each calendar month during the continuance of this lease, for all ore, minerals, products and substances above named, mined or removed from the land during the calendar month last preceding such date of payment. Provided, However, That in the event the royalties on said lands do not exceed twenty-one dollars per annum, after the year 190.., then the said second party, his agent or assigns, shall pay or cause to be paid to said first party, or his representatives, the sum of twenty-one dollars in the first week of July of
14 each year until the said royalties do exceed twenty-one dollars per annum. When the royalties exceed twenty-one dollars per annum, royalties only shall be payable. And the said party of the second part covenants and agrees that he will keep an accurate account of said mining operations, showing the whole amount of ore etc. mined or removed, and that the party of the first part shall have the right to make such reasonable examination of the books of account as may be necessary to obtain all information desired as to the amount of product mined or removed from said land under this lease. Should said second party fail to comply with the terms of this lease at any time, said first party may give him notice that unless said terms are complied with within thirty days from date of said notice, that said lease will be declared forfeited, after which said first party may enter upon and take possession of said premises without further notice.

In Witness Whereof, the said parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

CHARLES Q. BLACKHAWK, (Seal)
(By mark)

(Seal) IOWA & OKLAHOMA MINING COMPANY,
By E. K. Brown, President,
A. W. Abrams, Secretary.

Signed and sealed in the presence of
George Redeagle,
T. R. McGregor.

County of Cherokee,
State of Kansas—ss.

On this fourth day of April A. D. 1905, before me T. R. McGregor, a notary public within and for the County of Cherokee and State of Kansas appeared in person Charles Q. Blackhawk to me personally well known as the person whose name appears upon the within and foregoing lease, as the party of the first part, and stated [his] had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I have hereunto set my hand and official seal as such Notary Public in the County and State, as aforesaid, on the fourth day of April, A. D. 1905.

(Seal) T. R. McGREGOR,
(Deputy Notary Public and Ex-Officio Recorder).
My commission expires Sept. 13, 1905.

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15 Exhibit "G".

Charles Quapaw Blackhawk,
to
The Iowa & Oklahoma Mining Co.

Mining or Business Lease.

This Indenture, Made and entered into this 12th day of May, A. D., 1906, by and between Charles Q. Blackhawk of the Quapaw Reserve, in the Indian Territory, an allottee of the Quapaw tribe of Indians, party of the first part, and the Iowa & Oklahoma Mining Co., of Baxter Springs, Kansas, party of the second part, in pursuance of the provisions of an Act of Congress, approved June 7, 1897 (Public Document No. 3, page 11),

Witnesseth: That the said party of the first part for and in consideration of the sum of Twenty five Dollars to him paid by the party of the second part, the receipt of which is hereby acknowledged, and in consideration of the rents or royalties, undertakings and agreements hereinafter stated, to be paid and performed by the said party of the second part, his successors and assigns, does by these presents demise and lease unto the said party of the second part, his successors and assigns, the following described tracts or parcels of land, viz:

The Northeast quarter and the Northwest quarter of the Southwest quarter of Section thirty-two (32) in Township twenty-nine (29) North of Range twenty-four (24), East of the Indian Meridian in the Indian Territory, containing in the aggregate two hundred (200) acres, more or less,

for the term of ten years from the date hereof, Provided, that it is expressly understood and agreed by and between the parties hereto, that the execution and delivery and acceptance of this lease shall not in any manner be construed as a waiver or relinquishment by the lessee of any rights, title, interest or claim which it now holds, [own] or enjoys under and by virtue of prior leases held by it upon the lands above described, which leases are recorded within the office of the Deputy Clerk and Ex-Officio Recorder in and for the First Recording District of Indian Territory, at Miami, in Book "Q" at page 558, in Book "S" at pages 55 and 177, and this lease and all former leases above referred to shall run concurrently; that it is expressly declared that no merger of the [lessee] above referred to into each other or into this lease is contemplated by the execution of this lease, and that the said party of the second part may elect under which of the leases it holds upon the lands above described that it will operate and make payments to said first party, and that the payments and performances by said second party under either of the leases it holds upon said lands shall be in full payment and satisfaction of all requirements and conditions set forth in said several leases held by it upon said land for the term of said respective leases above referred to.

(The foregoing clause constitutes a part of the written terms and conditions of a certain mining or business
16 lease executed by Charley Quapaw Blackhawk to the Iowa & Oklahoma Mining Company of Baxter Springs, Kansas, dated May 12th, 1906, upon the N. W. ¼ and the NW. ¼ of the S. W. ¼ of Sec. 32, Twp. 29, R. 24, Quapaw Reservation, Ind. Ter., and is attached to and made a part thereof.)

To Have and to Hold said lands, unto said party of the second part, its successors and assigns, for the aforesaid term for the purposes of prospecting and mining for lead and zinc and every other kind or kinds of valuable mineral or ore, fossil, or vegetable substances whatever, with the right to so much of the surface of said land and so much of the timber and building stone found thereon as may be properly needed to successfully conduct said prospecting and mining operations; also the right of way over and across said land whereon to construct and operate such line or lines of railroad as may be necessary to carry on and prosecute the objects of this indenture, but reserving the right to go upon and

visit said lands and mines at such time as may be desired to examine and ascertain the amount of product mined thereon.

In Consideration of which the said party of the second part hereby agrees and binds his assigns, or sub-lessees to pay or cause to be paid to the party of the first part his executors, administrators or assigns, at office of party of second part a sum of money equal to (5) five per centum of the market value at the place mined or produced, of all lead, zinc, and all other minerals or substances whatever, which may be mined or removed by the said party of the second part, his successors, assigns or sub-lessees, from said land herein leased, except gas, which shall be forty dollars per annum for each paying well, and such payment or royalty or rent shall be made on or before the first week of each calendar month during the continuance of this lease, for all ore, minerals, products and substances above named, mined or removed from the land during the calendar month last preceding such date of payment. Provided, However, That in the event the royalties on said lands do not exceed twenty-one dollars per annum, after the year, 1906, then the said second party, his agent or assigns, shall pay or cause to be paid to said first party, or his representatives, the sum of twenty-one dollars in the first week of July of each year until the said royalties do exceed twenty-one dollars per annum. When the royalties exceed twenty-one dollars per annum, royalties only shall be payable. And the said party of the second part further covenants and agrees that he will keep an accurate account of said mining operations, showing the whole amount of ore, etc., mined or removed, and that the party of the first part shall have the right to make such reasonable examination of the books of account as may be necessary to obtain all information desired as to the amount of product mined or removed from said land under this lease. Should said party fail to comply with the terms of this lease at any time, said first party may give him notice that unless said terms are complied with within thirty days from date of said notice, that said lease will be declared forfeited, after which said first party may enter upon and take possession of said premises without further notice.

In Witness Whereof, the said parties of the first and second parts have hereunto set their hands and seals the day and year first above written.

CHARLEY Q. BLACKHAWK, (by mark)
(Seal)

THE IOWA & OKLAHOMA MINING CO.,
By E. Kemmeth Brown, Prest.
By A. W. Abrams, Sect.

17 Signed and Sealed in the
Presence of:
F. R. McGregor,
J. W. Dunham.

United States of America,
County of Cherokee,
State of Kansas—ss.

On this 12th day of May, A. D. 1906, before me F. R. McGregor, a Notary Public within and for the County of Cherokee and State of Kansas appeared in person Charley Q. Bluejacket to me personally well knows as the person whose name appears upon the within and foregoing lease, as the party of the first part, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I have hereunto set my hand and official seal as such Notary Public in the County and State, as aforesaid, on the 12th day of May, A. D. 1906.

(Seal) F. R. McGREGOR,
Notary Public.

My Commission expires Sept. 13th, 1909.

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18 Exhibit "H"

Charles Q. Blackhawk,
To
The Iowa & Oklahoma Mining Co.

Mining or Business Lease.

This Indenture, Made and entered into this 28th day of July, A. D., 1906, by and between Charles Q. Blackhawk (not married), of the Quapaw Reserve, in the Indian Territory, an allottee of the Quapaw tribe of Indians, party of the first part, and the Iowa & Oklahoma Mining Co., of Baxter Springs, Kansas, party of the second part,

Witnesseth: That the said party of the first part for and in consideration of the sum of Twenty-one Dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, and in consideration of the rents, royalties, undertakings and agreements hereinafter stated, to be paid and performed by the said party of the second part, its successors and assigns, does by these presents demise and lease unto the said party of the second part, its successors and assigns, the following described tracts or parcels of land, to wit:

The N. E. ¼ and the N. W. ¼ of the S. W. ¼ of Sec. 32, in Twp. 29 North, of Range 24, East of the Ind. Mer. in the Ind. Ter, containing 200 acres more or less, for the term of 20 years from the date hereof, Provided, that it is expressly understood and agreed by and between the parties to this lease that this lease and those certain mining leases held by said second party and recorded in the office of the Deputy Clerk and Ex-Officio Recorder, in and for the First Recording District, Indian Territory, in Book Q, P. 558, Book "S" pp 55 and Book "S" page 177 & Book "G" page 296-297, shall run concurrently until the expiration of the said leases respectively; and that no waiver, relinquishment or forfeiture of any of the rights or interests now held by said second party under the prior leases is intended by the execution, delivery and acceptance of this lease, and that no merger shall be effected of said prior leases, or any of them because of the execution, delivery and acceptance of this lease; also that second party shall have the right to elect which of said leases it will operate or hold said lands, and that payments or performances of the terms and conditions of any of the said leases shall be in full payment and satisfaction of all terms and conditions of like in all leases held by it upon said lands.

To Have and to Hold said lands for the purpose of prospecting and mining for lead, zinc and all and every other kind or kinds of valuable mineral or ore, or fossil, or vegetable substance whatever, with the right to use so much of the surface of said land and so much of the timber and building stone found thereon as may be properly needed to successfully conduct said prospecting and mining operations; also the right of way over and across said land whereon to construct and operate such line or lines of road as may be necessary to carry on and prosecute the objects of this indenture, but reserv-
19 ing the right to go upon and visit said land and mines at such times as may be desired to examined and ascertain the amount of product mined thereon.

In Consideration of which the said party of the second part hereby agrees and binds his successors, assigns, or sublessees to pay or cause to be paid to the party of the first part, his executors, administrators or assigns, at office of party of second part a sum of money equal to five (5) per centum of the market value at the place mined or produced, of all lead, zinc, and all other minerals or substances whatever, which may be mined or removed by the said party of the second part, his executors, administrators, assigns or sub-lessees, from said land herein leased, except gas, which shall be forty dollars per annum for each paying well, and such payments or royalty

or rent shall be made on or before the first week of each calendar month during the continuance of this lease, for all ore, minerals, products and substances above named, mined or removed from the land during the calendar month last preceding such date of payment. Provided, However, That in the event the royalties on said lands do not exceed twenty-one dollars per annum, after the year 1906, then the said second party, his agents or assigns, shall pay or cause to be paid to said first party, or his representatives, the sum of $21.00 dollars in the first week of July of each year until said royalties do exceed twenty-one dollars per annum. When the royalties exceed twenty-one dollars per annum, royalties only shall be payable. And the said party of the second part further covenants and agrees that he will keep an accurate account of said mining operations, showing the whole amount of ore, etc., mined or removed, and that the party of the first part shall have the right to make such reasonable examination of the books of account as may be necessary to obtain all information desired as to the amount of product mined or removed from said land under this lease. Should said second party fail to comply with the terms of his lease at any time, said first party may give him notice that unless said terms are complied with within thirty days from date of said notice, that said lease will be declared forfeited, after which said first party may enter upon and take possession of said premises without further notice.

In Witness Whereof, the said parties of the first and second parts have hereunto set their hands and seals the day and year first above written. By Charley Quapaw Blackhawk.

(Seal) CHARLEY QUAPAW BLACKHAWK
(by mark)

(Seal) IOWA & OKLAHOMA MINING CO.
By E. Kenneth Brown
By A. W. ABRAMS, Sect.

Signed and Sealed in the Presence of
and marks witnessed by F. R. McGregor,
To-me newakis Quapaw.

United States of America,
County of Cherokee,
State of Kansas—ss:

On this 28th day of May, A. D. 1906, before me F. R. McGregor, a Notary Public within and for the County of Cherokee and state of Kansas appeared in person Charley Q. Blackhawk with Ta-me. newakis Quapaw as Interpreter for [hi], who

declared that he had correctly [—] the foregoing lease
20 and the questions and answers of the said Charley Quapaw, to me personally well known as the person whose name appears upon the within and foregoing lease, as the party of the first part, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do hereby so certify.

In Testimony Whereof, I have hereunto set my hand and official seal as such Notary Public in the County and State as aforesaid, on the twenty-eighth day of May, A. D. 1906.

(Seal) F. R. McGREGOR, Notary Public.

My Commission expires Sept. 13, 1909.

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21 Exhibit "I".

Chas. Quapaw Blackhawk
to
Chas. F. Noble.

Baxter Springs, Kansas, Aug. 16th, 1902.

For Value Received, I, Charles Quapaw Blackhawk, do hereby grant, bargain, sell, assign, transfer and set over to Chas. F. Noble all my right, title and interest in and to the royalty, rent and proceeds of a certain mining lease described as follows, to-wit:

Dated January 11th, 1902, made by Charles Quapay Blackhawk to A. W. Abrams, leasing the Northwest quarter of Section thirty-two (32) and the Northwest quarter of the Southwest quarter of Section thirty-two (32) Township twenty-nine (29) North of Range twenty-four (24) East of the Indian Meridian, in the Quapaw Nation, Indian Territory, said lease is recorded in the office of the Clerk of the United States Court at Miami, Indian Territory, in Book "Q", pages 558 and 559 of records. Said lease is for the period of ten years (10) from its date and the lessors therein are to pay a royalty of five per cent (5%) of all minerals, oils, gas, fossils of any and every kind that may be produced or taken out of said lands, and to pay twenty dollars per year on lease when royalty amounts to less than twenty dollars per year in lieu of work that is to be done on said land, by this agreement and conveyance I convey and intend to convey to said Charles F. Noble said royalty and said rent.

It is further agreed and understood by Charles Quapaw Blackhawk that if the A. W. Abrams lease should be surrend-

ered and become void the within lease shall hold good for the period of ten years (10).

In witness whereof, I, Charles Quapaw Blackhawk have hereunto set my hand and seal this the 16″ day of August, nineteen hundred and two (1902).

his
CHARLES QUAPAW X BLACKHAWK.
mark
JOHN M. COOPER, Witness.

Subscribed and sworn to before me this 16″ day of August, 1902.

(Seal) E. V. McNEIL, Notary Public.

My commission expires Mar. 8″, 1904.

For and in consideration of the sum of One Dollar and other valuable considerations I hereby sell, assign, transfer and set over to John M. Cooper, a one-half interest in the above described instrument.

CHAS. F. NOBLE.

Subscribed and sworn to before me, a Notary Public for and in the State of Kansas, this 16″ day of August 1902.

(Seal) E. V. McNEIL, Notary Public.

My commission expires March 8th, 1904.

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22 Exhibit "J".

Charles Q. Blackhawk,
to
Thompson and Thompson.

Assignment of Royalties.

Know All Men by These Presents, That I, Charles Quapaw Blackhawk, of the Quapaw Reserve, of the Indian Territory, for and in consideration of One Dollar to me paid by A. S. Thompson, and V. E. Thompson, the receipt of which is hereby acknowledged, and other valuable considerations named herein [i jn] that, on the 8th day of September, 1905, I executed a contract with the said A. S. Thompson and V. E. Thompson whereby said parties were to prepare the necessary papers and prosecute a certain suit to judgment or compromise in the capacity of attorneys against Charles F. Noble and John M. Cooper for the annulment of an assignment of royalties made by me under a certain mining lease on

The N. W. ¼ and the N. W. ¼ of section 32, township 29, north, of range 24, east of the Indian meridian,

said contract providing in substance that the parties of the second part therein, same being grantees herein, in consideration of their services as therein provided for, I did release, sell and assign one-half of the proceeds of the judgment or compromise to be had in said suit; and

Whereas, said contract appears of record in the office of the Clerk of the United States Court at Miami in Book "E" on page 64 & 65; and

Whereas, said suit has been terminated and judgment entered therein, decreeing that I am owner of 2½ per centage of the entire product mined from said land and sold on or subsequent to the 31st day of January, 1906, and up to and including the 11th day of January, 1912, said judgment including, all sales of mineral up to said date January 11th, 1912, and all minerals on hand and on the dump at said date, unsold; and,

Whereas, said contract has been fully performed, and in consideration of the above named services, and pursuant to the terms of the said contract, I do hereby assign, sell, transfer and convey unto A. S. Thompson and V. E. Thompson, their heirs, executors, administrators and assigns an undivided one-half interest in and to the said judgment for royalties.

It is understood that it is the intention of this instrument to convey unto A. S. Thompson and V. E. Thompson one-half of the royalties recovered by me in said suit, which would be one and one-quarter per cent. of the whole product on said lands under the terms of the judgment entered in said case.

In Witness Whereof, I have hereunto set my hand this 21st day of February, 1906.

CHARLES Q. BLACKHAWK, (by mark)

Witness to mark:
A. W. Abrams.
George Redeagle, Interpreter.

23 County of Cherokee,
State of Kansas—ss.

On this 21st day of February, 1906, before me Samuel H. Smith, a Notary Public, appeared Charley Quapaw Blackhawk, personally known to me to be the person who executed the above and foregoing instrument and said that he had executed the same for the consideration and purposes therein mentioned and set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 21st day of February, 1906.

(Seal) SAM'L. H. SMITH,
Notary Public.

My commission expires 3/3/06.

County of Cherokee,
State of Kansas—ss.

On this 21st day of February, 1906, before me the undersigned Notary Public in and for the County of Cherokee and State of Kansas, personally appeared George Redeagle, to me personally well known as the person named as a subscribing witness and interpreter in the above and foregoing instrument, and who by me being first duly sworn, says that Charles Quapaw Blackhawk signed said instrument in his presence and acknowledged that he acknowledged the same for the consideration and purposes therein mentioned; that he had subscribed the same as a witness at the request of Charles Quapaw Blackhawk; that the said George Redeagle did interpret said instrument from Inglish into Quapaw language to the said Charles Quapaw Blackhawk before same was signed; that he interpreted said acknowledgement to said Charles Quapaw Blackhawk before he acknowledged the same, and that he, said George Redeagle has no interest directly or indirectly in the subject matter of the said foregoing instrument.

GEORGE REDEAGLE.

Subscribed and sworn to before me this 21st day of February, 1906.

(Seal) SAM'L. H. SMITH,
Notary Public.

My commission expires 3/3/06.

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24 (Certificate of Counsel for Appellees as to Exhibits.)

This is to certify that we, the undersigned, solicitors for the respective appellees in the above entitled cause, have examined the Bill of Complaint in the above entitled action, now on file in the office of L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, and know the contents thereof, and admit that the allegations contained in the petition of Paul A. Ewert, solicitor for the Appellant, are true, and admit that the said exhibits have been omitted from the transcript as certified by the Clerk of the Court; and we consent that the same shall now be certified to the United States Circuit Court of Appeals for the Eighth Circuit in order that the questions raised on

appeal may be fully determined upon their merits by the said Court.

J. J. BULGER,
Solicitor for Appellees, Charles F. Noble, John M. Cooper,

VERN E. THOMPSON,
Solicitor for Appellee,
V. E. Thompson.

A. S. THOMPSON,
Solicitor for Appellee,
A. S. Thompson.

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25 (Certificate of Clerk to Exhibits.)

United States of America,
Eastern District of Oklahoma—ss.

I, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the attached papers, marked Exhibits "A", "B", "C", "D", "E", "F" and "G", are a correct transcript of the original exhibits ataached to the Bill of Complaint in the hereinbefore entitled cause now on file in this office, and a part of the proceedings in the said case; and that the same were by inadvertence and error omitted from the transcript of the record and proceedings had in the said case as certified under my hand and seal on the 20th day of January, 1911, which transcript was duly filed on the 24th day of January, 1911, in the office of John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Witness my hand and the seal of the said Court, at Muskogee, Oklahoma, this 6th day of May, 1911.

U. S. Circuit Court, Seal of the Eastern District of Oklahoma.

L. G. DISNEY,
Clerk.

By H. E. Boudinot,
Deputy Clerk.

26 Filed in U. S. Circuit Court of Appeals May 8, 1911.

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27 (Order of U. S. Circuit Court of Appeals, May 8, 1911.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, 1911.

This cause came on to be heard upon the suggestion of diminution of record and petition of Appellant for a writ of

certiorari to bring up certain portions of the record omitted from the transcript in this cause and upon the consent of counsel for Appellees that such omitted portions of the record may be supplied.

On consideration whereof, it is now here ordered by this Court that said petition be, and the same is hereby, granted, and that the exhibits to the bill of complaint attached to the petition for writ of certiorari in so far as said exhibits are covered by and enumerated in the certificate of the clerk of the Circuit Court, viz: Exhibits "A", "B", "C", "D", "E", "F", and "G", shall be taken and shall stand as and for a return to a writ of certiorari, and shall be printed together with said petition for the writ as a part of the record in this cause, the issuance of a writ of certiorari herein being waived by this court.

May 8, 1911.

(Amended Certificate of Clerk U. S. Circuit Court, filed May 13, 1911.)

28 United States of America,
Eastern District of Oklahoma—ss.

I, L. G. Disney, Clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the attached papers, marked Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I" and "J", are a correct transcript of the original exhibits attached to the Bill of Complaint in the hereinbefore entitled cause now on file in this office, and a part of the proceedings in the said case; and that the same covered by and enumerated in the certificate of the clerk of of the record and proceedings had in the said case as certified under my hand and seal on the 20th day of January, 1911, which transcript was duly filed on the 24th day of January, 1911, in the office of John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Seal
U. S. Circuit Court
Eastern District of
Oklahoma

Witness my hand and the seal of the said Court, at Muskogee, Oklahoma, this 6th day of May 1911.

L. G. DISNEY, Clerk.
By H. E. Boudinot,
Deputy Clerk.

Filed in U. S. Circuit Court of Appeals, May 13, 1911.

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29 (Joint Motion to amend Order of May 8, 1911, providing for additional record.)

30 To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Your Petitioners respectfully show that the above entitled cause was argued to this Court at the May Term; that theretofore a petition for a writ of certiorari was presented to this Court showing that the Clerk of the Circuit Court of the United States for the Eastern District of Oklahoma had inadvertently omitted from the transcript of the record in said case all of the exhibits, whereupon an order of this Court was duly made directing the said Clerk to add to the transcript the said exhibits as a part of the record; that pursuant to said order the Clerk of the Circuit Court of the United States for the Eastern District of Oklahoma sent up the said exhibits A to J, inclusive, and made a certificate as to exhibits A to G, only; that thereupon an amended certificate was sent to this Court, including exhibits H, I and J as a part of the transcript; that none of the said exhibits A to J, inclusive, were printed or attached to the record at the time of the argument in said case although all of them were used, exhibits H, I and J being before the Court in that argument in typewritten form by consent and agreement of all counsel present in Court; that said exhibits H, I and J must necessarily be before this Court in the proper determination of the questions of law submitted to it on the appeal in this case.

Now, therefore, the undersigned, Solicitor for the Appellant, and the undersigned, Solicitors for the Appellees in said case, respectfully inform this Court, and move that the original order made, directing the printing of the exhibits in this case, be so amended as to include exhibits H, I and J
31 and that the same be attached to the printed record and form a part thereof in accordance with the amended certificate of the Clerk of the Circuit Court of the United States in and for the Eastern District of Oklahoma.

PAUL A. EWERT,
Solicitor for Appellant.

S. C. FULLERTON, Solicitor for A. J. Thompson, Appellee.

J. J. BULGER,
Solicitor for Appellees, Charles F. Noble, John M. Cooper.

VERN E. THOMPSON,
Solicitor for Appellee, V. E. Thompson.

A. S. THOMPSON,
Solicitor for Appellee, A. S. Thompson.

Filed in U. S. Circuit Court of Appeals, July 8, 1911.

33 Order of U. S. Circuit Court of Appeals, July 17, 1911.

United States Circuit Court of Appeals, Eighth Circuit.

United States of America, Appellant,
No. 3551. vs.
Charles F. Noble, et al.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard upon the joint motion of the parties filed July 8, 1911, for an order amending the order of this Court entered on May 8, 1911, so that exhibits "H", "I" and "J" to the bill of complaint shall be included within the terms of said order and be made a part of the record in this cause in addition to the exhibits to the bill of complaint as specified in said original order of May 8, 1911.

And it appearing that the clerk of the Circuit Court of the United States for the Eastern District of Oklahoma has filed in this cause in this Court an amended certificate covering and enumerating said exhibits "H", "I", and "J", it is upon consideration thereof, and in pursuance of said motion filed July 8, 1911, now here ordered, that the order of this Court entered on May 8, 1911, in this cause, be, and the same is hereby, amended to cover and include said exhibits "H", "I" and "J", and that the same shall stand and be printed as a part of the record in this Court.

July 17, 1911.

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May term, 1912, of said court, before the Honorable Elmer B. Adams and the Honorable Walter I. Smith, circuit judges, and the Honorable John A. Marshall, district judge.

Attest:

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-fourth day of January, A. D. 1911, a transcript of record, pursuant to an appeal allowed by the Circuit Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America is appellant and Charles F. Noble et al., are appellees, which said transcript is in the words and figures following, to wit:

74 *Certificate of clerk of U. S. Circuit Court as to original exhibits.*

And on the twelfth day of May, A. D. 1911, a certificate of the clerk of the Circuit Court of the United States for the Eastern District of Oklahoma as to the original exhibits, was filed in said cause in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, L. G. Disney, clerk of the United States Circuit Court for the Eastern District of Oklahoma, do hereby certify that the foregoing Exhibits A, B, C, D, E, F, G, H, I, and J were, through inadvertence and error, omitted from the bill of complaint in the transcript of the record and proceedings in the case of United States of America vs. Charles F. Noble et al.

Witness my hand and the seal of said court at Muskogee, Oklahoma, this 10th day of May, A. D. 1911.

[SEAL.] L. G. DISNEY, *Clerk.*
By H. E. BOUDINOT, *Deputy.*

(Endorsed:) No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Certificate of clerk as to orig. exhibits. Filed May 12, 1911, John D. Jordan, clerk.

Appearance of counsel for appellant.

And on the twenty-sixth day of January, A. D. 1911, the appearance of counsel for appellant was filed in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHARLES F. NOBLE ET AL.	No. 3551.

The clerk will enter my appearance as counsel for the appellant.

75 PAUL A. EWERT,
Special Assistant to the Attorney General,
315 Miners Bank Building, Joplin, Mo.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Appearance. Filed Jan. 26, 1911, John D. Jordan, clerk. Paul A. Ewert, counsel for appellant.

Appearance of Mr. Vern E. Thompson and Mr. A. S. Thompson as counsel for certain appellees.

And on the twenty-eighth day of January, A. D. 1911, the appearance of Mr. Vern E. Thompson and Mr. A. S. Thompson as counsel for certain appellees was filed in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHARLES F. NOBLE, JOHN M. COOPER, A. J. Thompson, A. S. Thompson, and V. E. Thompson, appellees.	Appearance.

The clerk will enter our appearance for the appellees, A. S. Thompson and V. E. Thompson.

VERN E. THOMPSON,
Miami, Okla.
A. S. THOMPSON,
Attorneys for A. S. Thompson and V. E. Thompson, appellees.

(Endorsed:) No. 3551. In the United States Court of Appeals for the Eighth Circuit, sitting at St. Louis. United States of Amer-

ica, appellant, vs. Charles F. Noble et al., appellees. Filed Jan. 28, 1911, John D. Jordan, clerk. Appearance of Vern E. Thompson and A. S. Thompson, counsel for appellees.

76 *Appearance of Mr. J. J. Bulger as counsel for certain appellees.*

And on the thirtieth day of January, A. D. 1911, the appearance of Mr. J. J. Bulger, as counsel for certain appellees, was filed in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHARLES F. NOBLE, JOHN M. COOPER, A. J. Thompson, A. S. Thompson, V. E. Thompson et al., appellees.	In Equity. No. 3551.

Notice of appearance.

To JOHN D. JORDAN, *Clerk of the United States Circuit Court of Appeals for the Eighth Circuit:*

Please enter my appearance as solicitor for the following-named appellees: Charles F. Noble, John M. Cooper, and A. J. Thompson, in the case of the United States of America, appellant, vs. Charles F. Noble et al. (in equity, No. 3551), as appellees.

J. J. BULGER,
Solicitor for Charles F. Noble, John M. Cooper, and A. J. Thompson, Appellees.
Baxter Springs, Kansas.

(Endorsed:) No. 3551. In the United States Circuit Court of Appeals for the Eighth Circuit. United States of America, appellant, vs. Charles F. Noble and John M. Cooper et al., appellees. Notice of appearance. Filed Jan. 30, 1911, John D. Jordan, clerk. J. J. Bulger, Baxter Springs, Kan., counsel for certain appellees.

Suggestion of diminution of record by appellant and petition for writ of certiorari.

77 And on the fourth day of March, A. D. 1911, a suggestion of diminution of record by appellant and petition for a writ of

certiorari was filed in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. Thompson, and V. E. Thompson, appellees.	No. 3551.

To the Honorable Circuit Court of Appeals of the United States, Eighth Circuit:

The petition of the United States of America, appellant, respectfully shows to this honorable court that it filed in the Circuit Court of the United States for the Eastern District of Oklahoma a certain bill in equity on, to wit, the 26th day of July, 1909, entitled United States of America, complainant, vs. Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, Vern E. Thompson, L. C. Jones, A. W. Abrams, and The Iowa & Oklahoma Mining Company, defendants.

That thereafter the said defendants, Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and Vern E. Thompson, respectively, interposed demurrers to the bill of complaint, which demurrers came on to be heard and determined on the 5th day of December, 1910, and an order sustaining the demurrers so interposed by said defendants, Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and Vern E. Thompson, was on said day entered by said court, as follows:

(Venue and caption.)

Journal entry.

On this 5th day of December, 1910, on consideration of the demurrers to this bill filed by the defendants, A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, which were heretofore argued, submitted, and by the court taken under advisement, the court now finds that the com-
78 plainant has such an interest in the matters involved in this case, and that there is such equity in the bill as entitled it to maintain this action against the defendants, A. W. Abrams and The Iowa & Oklahoma Mining Co., but that the complainant has no such interest in the matters involved in this case, and that there is no such equity in the bill as entitles it to maintain this action against the defendants, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, and V. E. Thompson.

It is the judgment of the court that for the foregoing reasons that the demurrers interposed by the defendants, A. W. Abrams and The

Iowa & Oklahoma Mining Company, should be overruled, and that the demurrers interposed by the defendants, Charles F. Noble, John M. Cooper, A. S. Thompson, A. J. Thompson, and V. E. Thompson, should be sustained.

It is therefore ordered that the respective demurrers interposed by A. W. Abrams and The Iowa & Oklahoma Mining Company be overruled at the cost of the said defendants, and that the respective demurrers interposed by the defendants, Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and V. E. Thompson, be sustained.

To this order and rulings of the court the several defendants and the complainants duly excepted, the exception being allowed by the court and the defendants and complainant given until the rule day in February, 1911, in which to plead.

RALPH E. CAMPBELL,
Judge of the Circuit Court for the Eastern District of Oklahoma.

That thereafter, to wit, on the 2nd day of January, 1911, an appeal to this court was allowed and perfected, and on the 24th day of January, 1911, a transcript of all of the proceedings was filed in the United States Circuit Court of Appeals for the Eighth Circuit, sitting at the city of St. Louis, U. S. A., and said cause was entered and docketed in said Circuit Court of Appeals and entitled United States of America, appellant, vs. Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and Vern E. Thompson, appellees, and numbered 3551 on said docket.

79 That thereafter, to wit, on the 31st day of January, 1911, it was made to appear to the Honorable Ralph E. Campbell, judge of the Circuit Court of the United States for the Eastern District of Oklahoma, that an error had been made in the entry of the order made on said 5th day of December, 1910, sustaining the demurrers interposed by the said defendants, Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and Vern E. Thompson, in that there was omitted in the said order, after the words "be sustained," in the next to the last paragraph, the following words: "and the bill of complaint as to the said defendants be dismissed."; and that there was inserted after the words "defendants." in the third line of the last paragraph, the words "and complainant" instead of the words "A. W. Abrams and The Iowa & Oklahoma Mining Company."

That thereupon the court on, to wit, the said 31st day of January, 1911, upon motion of counsel for the complainant and counsel for all of the defendants, and by their unanimous consent in writing, caused the said order to be corrected in the above respects and the words "and the bill of complaint as to the said defendants be dismissed," added after the words "be sustained," in the next to the last paragraph of the said order; and the words, "A. W. Abrams and The Iowa & Oklahoma Mining Company," substituted for the words "and complainant" in the third line of the last paragraph of the said order;

and directed that the same as amended stand as the original order in said matter.

And your petitioner respectfully shows that in order that the Circuit Court of Appeals of the United States for the Eighth Circuit may have jurisdiction to determine the appeal in this case made upon its merits that the said order as corrected be certified to this court and made a part of the transcript in this case now on file, to stand in said transcript as the original order made by the lower court.

Wherefore, your petitioner prays that a writ of certiorari be issued under the seal of the court, directed to the United States Circuit Court for the Eastern District of Oklahoma, commanding the court to certify and send to this court forthwith as a part of the transcript of the proceedings in this case had in his court, the said cor-
80 rected order as now entered and of record in said court.

PAUL A. EWERT,
Solicitor for Appellant.

STATE OF MISSOURI, *county of Jasper, ss:*

Before me appeared this day Paul A. Ewert, and upon oath says that he is solicitor for the appellant in the above-entitled action, that he knows of the above proceedings had and that the facts therein stated are true to the best of his knowledge and belief.

In testimony whereof, I have hereunto set my hand and seal this 4th day of March, 1911.

[SEAL.] JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

(Endorsed:) No. 3551. United States of America, appellant, vs. Charles F. Noble et al., appellees. Suggestion of diminution of record by appellant and petition for writ of certiorari. Filed Mar. 4, 1911, John D. Jordan, clerk. P. A. Ewert, solicitor for appellant.

Stipulation waiving writ of certiorari and providing transcript of record may be amended, etc.

And on the 4th day of March, A. D. 1911, a stipulation waiving writ of certiorari and providing that transcript of record may be amended, etc., was filed in said cause, in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON, and V. E. Thompson, appellees.

We, the undersigned, solicitors for the appellees, Charles F.
81 Noble, John M. Cooper, A. J. Thompson, A. S. Thompson,

and V. E. Thompson, in the above-entitled action, do hereby admit the truth of the allegations contained in the application for a writ of certiorari in the above-entitled matter by Paul A. Ewert, solicitor for the appellant, and do hereby waive the issuing of a writ of certiorari out of this court directed to the judge of the United States Circuit Court for the Eastern District of Oklahoma, commanding him to certify and send to this court forthwith as a part of the transcript of the proceedings in this case had in his court, the said corrected order as now entered and a part of the record in said court, and do hereby consent and agree that the attached certified copy of the corrected order, entered in said case under date of January 31, 1911, be added to the transcript of the proceedings now on file and of record in this court, the said corrected order to stand as the original order in this court.

J. J. Bulger,
Solicitor for Defendants,
Charles F. Noble, A. J. Thompson, and John M. Cooper.

V. E. Thompson and
A. S. Thompson,
Solicitors for Defendants,
A. S. Thompson and V. E. Thompson.

In the Circuit Court of the United States for the Eastern District of Oklahoma.

The United States of America, complainant, vs. A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, defendants.	Equity. No. 1113.

Order overruling demurrers of the defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, and sustaining the demurrers of defendants, Charles F. Noble, John M. Cooper, A. S. Thompson, A. J. Thompson, and V. E. Thompson.

82 *Journal entry.*

On this 5th day of December, 1910, on consideration of the demurrers to this bill filed by the defendants, A. W. Abrams, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, which were heretofore argued, submitted, and by the court taken under advisement, the court now finds that the complainant has such an interest in the matters involved in this case and that there is such equity in the bill as entitles it to maintain this action against the defendants, A. W. Abram, and The Iowa & Oklahoma Mining Co., but that the complainant has no such interest in the matters

involved in this case, and that there is no such equity in the bill as entitles it to maintain this action against the defendants, Charles F. Noble, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, and V. E. Thompson.

It is the judgment of the court that for the foregoing reasons that the demurrers interposed by the defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, should be overruled, and that the demurrers interposed by the defendants, Charles F. Noble, John M. Cooper, A. S. Thompson, A. J. Thompson, and V. E. Thompson, should be sustained.

It is therefore ordered that the respective demurrers interposed by A. W. Abrams and The Iowa & Oklahoma Mining Company be overruled at the cost of the said defendants, and that the respective demurrers interposed by the defendants, Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and V. E. Thompson, be sustained and the bill of complaint as to the said defendants be dismissed.

To this order and ruling of the court the several defendants and the complainants duly excepted, the exception being allowed by the court and the defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, given until the rule day in February, 1911, in which to plead.

RALPH E. CAMPBELL,
Judge of the Circuit Court for the Eastern District of Oklahoma.

83 STATE OF OKLAHOMA,
County of Muskogee, ss:

L. G. Disney, clerk of the United States Circuit Court in and for the Eastern District of Oklahoma, do hereby certify that the foregoing is a full, true, correct, and complete copy of the corrected order in the case therein entitled as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in the city of Muskogee, in said county, in the Eastern District of Oklahoma, on this 28th day of February, 1911.

[SEAL.] L. G. Disney, *Clerk.*
By H. E. BOUDINOT, *Deputy.*

(Endorsed:) No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Stipulation waiving writ of certiorari and providing transcript of record may be amended, etc. Filed Mar. 4, 1911. John D. Jordan, clerk.

Order of argument.

And on the twentieth day of May, A. D. 1911, in the record of the proceedings of said Circuit Court of Appeals is an order of argument in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. May term, 1911. Saturday, May 20, 1911.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE ET AL. } No. 3551.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

This cause having been called for hearing, argument was commenced by Mr. Paul A. Ewert for appellant and continued by Mr. Vern E. Thompson for appellees, and the hour for adjournment having arrived, further argument is postponed until Monday, May 22, 1911.

84 *Appearance of Mr. S. C. Fullerton as counsel for the appellee, A. J. Thompson.*

And on the twenty-second day of May, A. D. 1911, the appearance of Mr. S. C. Fullerton, as counsel for the appellee, A. J. Thompson, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE ET AL. } No. 3551.

The clerk will enter my appearance, counsel for the appellee, A. J. Thompson.

S. C. FULLERTON,
Attorney for A. J. Thompson, Appellee.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Appearance. Filed May 22, 1911. John D. Jordan, clerk. S. C. Fullerton, counsel for appellee, A. J. Thompson.

Order of submission.

And on the twenty-second day of May, A. D. 1911, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. May term, 1911. Monday, May 22, 1911.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE ET AL. } No. 3551.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

This cause having been called for further hearing, argument
85 was continued by Mr. Vern E. Thompson and Mr. S. C. Fullerton for appellees and concluded by Mr. Paul A. Ewert for appellant.

Thereupon, this cause was submitted to the court on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

Opinion.

And on the twenty-third day of May, A. D. 1912, the opinion of the United States Circuit Court of Appeals for the Eighth Circuit was filed in said cause, in the words and figures following, to wit:

86 United States Circuit Court of Appeals, Eighth Circuit. May Term, A. D. 1912.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE ET AL., APPELLEES. } No. 3551.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

Mr. Paul A. Ewert for appellant.

Mr. Vern E. Thompson and Mr. S. C. Fullerton (Mr. A. S. Thompson and Mr. J. J. Bulger with them on the briefs), for appellees.

Before Adams and Smith, circuit judges, and Marshall, district judge.

Smith, circuit judge, delivered the opinion of the court.

The Quapaw Tribe of Indians were finally located in Indian Territory, now Oklahoma, and it was agreed their lands should be conveyed to them in common by the Government under treaty proclaimed April 12, 1834, 7 Stats., 424.

March 23, 1893, the Quapaw National Council provided for the allotment of these lands in severalty. By the Indian appropriation act of March 2, 1895, 28 Stats., 876 (907), Congress ratified and confirmed these and future allotments subject to revision, correction, and approval by the Secretary of the Interior, and the Secretary was authorized to issue patents and provided that such allotments should be inalienable for twenty-five years from date of the allotment. In pursuance of this provision there was allotted to Charley Quapaw Blackhawk two hundred acres of land, which was duly patented September 26, 1896. By the Indian appropriation act of June 7, 1897, 30 Stats., 62 (72), it was provided:

"That the allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes."

87 Under this provision Blackhawk, on January 11, 1902, leased his allotment to A. W. Abrams for mining purposes, for ten years, for ten dollars per annum for each paying gas well, minerals, and forty dollars per annum for each paying gas well, with a guaranty that the royalties would equal twenty dollars per annum. August 13, 1903, Abrams assigned this lease to The Iowa & Oklahoma Mining Company. August 24, 1903, Blackhawk, for eighteen dollars and the continuance of the royalties and a guaranty of twenty-one dollars a year therefrom, made a new lease for ten years to A. W. Abrams and expressly cancelled the former lease. The new lease was assigned on November 2, 1904, to The Iowa & Oklahoma Mining Company. March 25, 1905, Blackhawk, in consideration of ten dollars and the payment of five per cent royalties, leased his allotment to L. C. Jones and A. J. Thompson for ten years, subject to the lease of January 1 (11), 1902, to Abrams. July 31, 1905, Jones assigned his interest in this lease to Thompson. April 4, 1905, Blackhawk leased his allotment for ten years to The Iowa & Oklahoma Mining Company for twenty-five dollars and five per cent of the mining product and forty dollars a year for each gas well, with a guaranty that the royalties would equal twenty-one dollars per annum. August 16, 1902, Blackhawk assigned to Charles F. Noble the royalties, rents, and proceeds of the lease of January 11, 1902, to Abrams, and if said lease was surrendered or became void then for the period of ten years, and on the same day Noble assigned one-half of his interest under the assignment to John M. Cooper. Subsequently suit was brought to set aside this assignment and was successful as to one-half of the royalties after January 31, 1906, and thereafter Blackhawk assigned one-half of his half so recovered, or one-fourth of the royalties, to his attorneys, A. S. Thompson and V. E. Thompson.

The United States Government brought suit to set aside all the conveyances heretofore referred to and others, but, as it was successful on demurrer as to such other conveyances, they aré not material

here. As to these conveyances a demurrer was sustained to the bill, United States v. Abrams (181 Fed., 847), and the Government appeals.

It was held by the court in United States v. Allen (179 Fed., 13), and by the Supreme Court in Hackman et al. v. The United States (22– U. S.,), that suit could be brought by the United States to set aside a conveyance of the title within the period of restriction.

This case involves a different question as to the ability of the United States to maintain an action to set aside a lease covering the period authorized by the act of June 7, 1897. There is substantially no difference between this case and the case of The United States v. A. W. Abrams et al. (194 Fed., 82), except that in that case it appears that after the taking of the last lease there was an express release of all the prior ones and the lessee only claimed to hold under the last lease. That was true of all the leases here in question except the lease of April 4, 1905. The last-named lease was sustained upon the showing that the acceptance by the tenant of a new lease constituted a surrender of an old lease by operation of law unless the surrender would be contrary to the intention of the parties. (24 Cyc., 1369.)

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It is contended that as a surrender on April 4, 1905, would at once turn the property over to Jones and Thompson under the lease of March 25, 1905, it was manifestly contrary to the intention of the parties to have the lease of April 4, 1905, considered as a surrender of the lease of August 24, 1903, as this would put Jones and Thompson in possession over nine years before they would otherwise be so and leave a remnant of only about ten days under the lease then being made. This court is, however, unable to find any necessity for a release of the old leases if none of them extended over ten years from their execution.

The history of the change of the law with reference to the Indians must be borne in mind. At first treaties were negotiated with them as alien but dependent people, but it was established by the Supreme Court that the Government was the guardian of the Indians, and that the authority of Congress was plenary as to them, yet they were largely independent of the ordinary rules of guardianship as to minors and as to persons of unsound mind. Originally they had no individual real estate, but as among themselves they bought and sold personal property without restraint, except in a few isolated instances their power to trade was limited to their own tribe. For example, the Indian appropriation law of July 4, 1884 (23 Stats., 94), provided that cattle purchased by the Government and turned over to the Indians could only be sold to members of the same tribe without the consent of the Indian agent. Laws were enacted prohibiting the liquor traffic with the Indians for the protection of the whites as much as the Indians. Other illustrations might be given of specific restrictions, but in the absence of such restrictions the Indians were as free to trade and barter as were white men, and their actions were

as binding upon them. Finally Congress decided that the form of guardianship maintained, even free as it was from the ordinary restraints of that relation, could not be permanently maintained, but the Indians must be regarded as in a state of tutelage preliminary to their emerging into full citizenship. When the time for allotment came they were usually made citizens of the United States and were allotted lands in severalty, but they were restricted in selling them for twenty-one and twenty-five years. They were the owners of the lands subject to this restriction, and when they were authorized to lease them for farming and grazing purposes for three years and for mining and business purposes for ten years, that was a distinct emancipation of them for the periods and the purposes named and
89 for such periods the Government surrendered all guardianship over the Indians with reference to the specified leases of their lands.

It is contended that what is styled overlapping leases are invalid and when an Indian allottee has leased his land for ten years for mining purposes he can not again lease it until the expiration of that period and that such a construction would be for the Indian's benefit and protection.

It may be such a provision would be for the Indian's better protection, but it is for Congress to give such protection and not the courts. No such provision can be found in the acts of Congress.

It is contended that the Jones and Thompson lease was not properly acknowledged, but this could not affect its validity as between the parties.

It is claimed that the assignment of royalties was invalid because the metals were part of the real estate and their assignment constituted a sale of the same and they were consequently invalid.

It is true that at the time of the making of the assignments the ores were in the ground and part of the real estate, but the leases contemplated, as the law in authorizing mining leases must have contemplated, their separation from the real estate and this far the leases were clearly legal. They provided not for turning over to Blackhawk five per cent of the metal mined, but that the party of the second part should pay to the party of the first part a sum of money equal to five per centum of the market value of all minerals. It was the sum of money which was assigned and this was not a violation of the prohibition of alienation for twenty-five years.

The decree is affirmed.

Filed May 23, 1912.

Adams, circuit judge, dissenting.

The national policy disclosed by the act of June 7, 1897 (30 Stat., 62, 72), in so far as it related to Quapaw Indians was to permit them to part with the use and control of their several allotments for mining purposes for a limited period. The act permits them to lease their allotments for that purpose for a term "not exceeding

ten years." In this legislation Congress was concerned chiefly with the interest of its wards. It had the right to permit them to lease their allotments or not as to it seemed best. It had the right and it was the duty of Congress to surround them with such precautions and safeguards as would best subserve their interests. When that act was passed the character and extent of the minerals under-
90 neath the surface of the Quapaw country were comparatively unknown. There were possibilities of great value in them, which most obviously should be realized by the Indians rather than by speculators.

Leases for mining purposes were authorized for the period of ten years and not longer. During this period experimental work and much profitable mining might be done by the lessees and the resources of the land so developed that the Indians might thereafter have and enjoy a valuable and well-developed mining property. Doubtless reasons like these actuated Congress to limit the leasehold terms as it did.

A brief résumé of the facts of this case shows that on January 11, 1902, Blackhawk leased his allotment to Abrams for a full term of ten years for mining purposes. This lease was afterwards assigned to Iowa and Oklahoma Mining Company. On August 24, 1903, Blackhawk executed another mining lease to Abrams for the full term of ten years. A clause in this last-mentioned lease declaring that "all leases or parts of leases heretofore made are by mutual consent cancelled, annulled, and abrogated" had no effect upon the lease of January 11, 1902, because that had already been assigned to the mining company, and Abrams presumptively had no power to cancel it. On November 2, 1904, Abrams assigned his second lease to the same mining company.

Afterwards, on April 4, 1905, Blackhawk executed another mining lease to the mining company for another full term of ten years.

By these three leases the mining company became the owner, either as original lessee or assignee of the original lessee of a continuous term from January 10, 1902, to April 4, 1915, of approximately thirteen years and three months duration. Not only so, but on March 25, 1905, Blackhawk executed another mining lease to the same allotment for a period of ten years to L. C. Jones and A. J. Thompson, which was subsequently assigned by Jones to Thompson. There were, therefore, four mining leases each for the full term of ten years, which, taken together, excluded the Indian from possession and enjoyment of his allotment for a considerable period of time in excess of ten years.

We held in United States v. Abrams (C. C. A. , 194 Fed., 82), just decided, that where there had been several mining leases made by the same allottee and all had been in good faith cancelled by the parties thereto, no obstacle was interposed to the making of another lease for the full period of ten years. That is as far as my judgment permits me to go. The practice of securing overlapping leases for the same tract of land seems to me to be a device or expedient to circumvent the obvious purpose of the act of Congress.

According to it one person may not only secure, but may from the beginning intend to secure, a lease of mining land for periods of time in the aggregate far in excess of that which Congress
91 permitted. This enables an Indian to contract away his right of possession and enjoyment and his reasonable expectation for the future, contrary to the manifest policy of Congress. It opens a door to easy fraud upon the unsuspecting Indian and upon the law.

The answer to the conclusion I have reached, as I understand it, is that the Indian has never in fact made a lease for a term exceeding ten years for mining purposes, and that however many he may have executed he is still within the letter of the law. He may be within the letter, but, in my opinion, he is not within the spirit of the law. For these reasons I am constrained to dissent from the opinon of the court in this case. I think the court erred in sustaining the demurrer of A. J. Thompson and in its construction of the statute so as to exonerate Abrams and the mining company from liability with respect to the leases of date August 24, 1903, and April 4, 1905. The court properly overruled the demurrer of Abrams and the mining company in so far as their attempted justification of a lease executed by Blackhawk on July 28, 1906, to the mining company for a period of twenty years was concerned; and in my opinion their demurrer should have been overruled not only as to the last-mentioned lease, but also as to the other leases secured by them, excepting the first one dated January 11, 1902.

I agree with the conclusion reached by the majority that the assignments by Blackhawk of the royalties reserved by him in the first Abrams lease to Noble, Cooper, A. S. and V. E. Thompson were valid, that the bill was properly dismissed as to these last-named defendants, and that as to them the decree below should be affirmed.

Filed May 23, 1912.

92 *Decree.*

And on the twenty-third day of May, A. D. 1912, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. May term, 1912. Thursday, May 23, 1912.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. Thompson, and V. E. Thompson. } No. 3551.

Appeal from the Circuit Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

May 23, 1912.

Petition for and order allowing appeal to Supreme Court, U. S.

And on the twenty-fifth day of January, A. D. 1913, a petition for and order allowing an appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to wit:

In the Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
A. W. ABRAMS, CHARLES F. NOBLE, JOHN M. COOPER, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and the Iowa and Oklahoma Mining Company, appellees.

Petition for Appeal.

93 Comes now the appellant, by William J. Gregg, United States attorney for the Eastern District of Oklahoma, by direction of the Attorney General of the United States, and represents and shows the court that the appellant The United States of America feels itself aggrieved by the order and judgment of this court, made and entered in the above-entitled cause on the 23 day of May, 1912, wherein this court sustained the judgment of the Circuit Court for the Eastern District of Oklahoma, from the judgment of which court appellant prosecuted its appeal to this court, and appellant does hereby in open court pray an appeal from said order and judgment of this honorable court to the Supreme Court of the United States for the reasons and upon the grounds specified in the assignment of errors filed herewith, and that a transcript of the record and the proceedings upon which said order and judgment is based, duly authenticated, may be sent to the Supreme Court of the United States by the clerk of this court, and your petitioner further prays that a proper order touching the security to be required of appellant, if any, and an order directing the clerk to send up the record in this cause and perfect the appeal herein, be duly made.

WILLIAM J. GREGG,
Attorney for Appellant.

The above appeal allowed this 25 day of January, 1913.

WALTER H. SANBORN,
94 *Presiding Judge of the United States Circuit Court of Appeals, Eighth Circuit.*

(Endorsed:) No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Petition for and order allowing appeal to the Supreme Court of the United States. Filed Jan. 25, 1913. John D. Jordan, clerk.

Assignment of errors on appeal to Supreme Court, U. S.

And on the twenty-fifth day of January, A. D. 1913, an assignment of errors on appeal to the Supreme Court of the United States
94 was filed in said cause, in the words and figures following, to wit:

In the Circuit Court of Appeals for the Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT,
v.
CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON, AND V. E. THOMPSON, APPELLEES.

Assignment of errors.

The United States of America, the appellant in this cause, feeling and alleging that there is manifest error in the decree of this court made and entered herein on the 23rd day of May, 1912, makes and files the following assignment of the errors so committed, upon which it will rely in its appeal from the said decree to the Supreme Court:

1. The said Circuit Court of Appeals erred in affirming the decree of the Circuit Court for the Eastern District of Oklahoma sustaining the demurrers interposed by the appellees and dismissing the appellant's bill.

2. The Circuit Court of Appeals erred in not reversing the decree of the said Circuit Court.

3. The Circuit Court of appeals erred in holding that the United States did not have such an interest in the contracts of assignment of royalties entered into between the Indian Charles Quapaw Blackhawk and the appellees, Charles F. Noble, A. S. Thompson, and V. E. Thompson, so as to permit the United States to maintain its bill against said parties.

4. The Circuit Court of Appeals erred in holding that the United States could not maintain a suit in its own name for the purpose of setting aside on the ground of fraud, misrepresentation, and inadequacy of consideration the mining lease alleged in the bill of complaint to have been procured by one L. C. Jones and the appellee, A. S. Thompson, from the Indian allottee Blackhawk for an inadequate consideration and through misrepresentation and fraud practiced upon the said allottee.

5. The Circuit Court of Appeals erred in not holding that
95 the Indian allottee, Charles Quapaw Blackhawk, exhausted his right to make further leases of the land allotted to him during the period of ten years beginning January 11, 1902, when he

made, executed, and delivered to one A. W. Abrams the mining lease set forth in paragraph 4 of the bill of complaint, whereby he leased said land to the said Abrams for the full term of ten years from January 11, 1902.

6. The Circuit Court of Appeals erred in not holding that the assignment of royalties made to the defendant, Charles F. Noble, by the Indian allottee, Blackhawk, under the said lease of January 11, 1902, was unlawful.

7. The Circuit Court of Appeals erred in not holding that the assignment by the Indian allottee, Blackhawk, to the defendants, A. S. Thompson and V. E. Thompson, as alleged in paragraph 12 of the bill, was an invalid and unlawful assigment of royalties accruing to the said allottee, Blackhawk, under the said lease of January 11, 1902.

8. The Circuit Court of Appeals erred in not holding that the contract of assignment executed by the Indian allottee, Blackhawk, on the 16th day of August, 1902, whereby and wherein the said Blackhawk did, among other things, sell, assign, and transfer unto the appellee, Charles F. Noble, for a term of ten years from August 16, 1902, all right, title, and interest in and to all royalties that might become due and payable to the said Blackhawk upon ores sold from the land allotted to the said Blackhawk, was in effect a contract for the sale of an interest in the land itself and therefore was unlawful and invalid.

Wherefore, the appellant prays that the said decree of the Circuit Court of Appeals be reversed and a decree be entered herein sustaining the plaintiff's bill.

WILLIAM J. GREGG,
Solicitor for Appellant.

(Endorsed:) No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Assignment of errors on appeal to Supreme Court of the United States. Filed Jan. 25, 1913; John D. Jordan, clerk.

96 *Citation.*

And on the sixth day of March, A. D. 1913, a citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which, with acknowledgment of service and marshals' returns of service endorsed thereon, is hereto attached and herewith returned:

97 United States of America, to Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and V. E. Thompson, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, in the District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is appellant

and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the honorable Walter H. Sanborn, presiding judge of the United States Circuit Court of Appeals for the Eighth Circuit, this twenty-fifth day of January, A. D. 1913.

WALTER H. SANBORN,
Presiding Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Receipt is hereby acknowledged of service of the foregoing citation upon me this 28" day of January, A. D. 1913.

S. C. FULLERTON,
Solicitor for A. J. Thompson.

(Indorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3551. United States of America, appellant, vs. Charles F. Noble et al. Citation on appeal to Supreme Court, U. S.

98 *United States marshal's return.*

UNITED STATES OF AMERICA,
Eastern District of Okla., ss:

Received this writ the 16th day of February, 1913, at Tulsa, Okla., and executed it the 17th day of February, 1913, at Tulsa, Okla., by delivering a true copy to Charles F. Noble, in person.

S. G. VICTOR, *U. S. Marshal.*
By WALTER DUCKETT, *Deputy.*

Received the within writ on the 14th day of February, 1913, and executed the same as follows, to wit:

I served said writ on the within-named John M. Cooper by delivering a true copy of said writ to the said John M. Cooper personally at Baxter Springs, Kansas, and within the district of Kansas, on the 14th day of February, 1913.

(Signed) JOHN R. HARRISON,
U. S. Marshal.
By P. C. HESSER,
Deputy.

Received the within writ on the 28 day of February, 1913, and executed the same as follows, to wit: I served said writ on the within-named A. S. Thompson by delivering a true copy of said writ to the Mrs. Elsie Thompson, his wife, at the usual place of abode of said A. S. Thompson, at Miami, Okla., and within the Eastern District of Oklahoma, on the 28 day of February, 1913.

Received the within writ on the 12 day of February, 1913, and executed the same as follows, to wit: I served said writ on the within-named V. E. Thompson by delivering a true copy of said writ

to the said V. E. Thompson personally at Miami, Okla., and within the Eastern District of Oklahoma, on the 13 day of February, 1913.

S. G. VICTOR,
United States Marshal, Eastern District of Oklahoma.
By ED FREEMAN,
Deputy.

99 (Indorsed:) Supreme Court of the U. S. No. . October term, 1912. The United States of America, appellant, vs. Charles F. Noble et al. Original citation on appeal to Supreme Court and proof of service. Filed Mar. 6, 1913. John D. Jordan, clerk.

100 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the Circuit Court of the United States for the Eastern District of Oklahoma as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, in the United States Circuit Court of Appeals, in a certain cause in said court wherein the United States of America is appellant and Charles F. Noble et al. are appellees, No. 3551, as full, true, and complete as the originals of same remain on file and of record in my office.

I do further certify that the original citation, with acknowledgment of service and marshal's returns of service endorsed thereon, is hereto attached and herewith returned.

I do further certify that on the twenty-third day of July, A. D. 1912, a mandate was issued out of said Circuit Court of Appeals in said cause directed to the judges of the District Court of the United States for the Eastern District of Oklahoma, as the successor of the Circuit Court for said district.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the city of St. Louis, Missouri, this seventh day of March, A. D. 1913.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsement on cover:) File No., 23590. U. S. Circuit Court Appeals, 8th Circuit. Term No., 1015. The United States of America, appellant, vs. Charles F. Noble, John M. Cooper, A. J. Thompson, A. S. Thompson, and V. E. Thompson. Filed March 15th, 1913. File No., 23590.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES *v.* CHARLES F. NOBLE, JOHN M. COOPER, A. J. Thompson, A. S. Thompson and V. E. Thompson, appellees.	No. 127.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

[The opinion of the Circuit Court will be found at R., 28, and 181 Fed., 847; that of the Court of Appeals at R., 83, and 197 Fed., 292.]

The object of this suit was to set aside a series of mining leases of an Indian allotment, and certain assignments of rents and royalties, upon the ground that they were violative of the restrictive legislation of Congress and upon the additional ground, in respect of the leases, that they were procured by the practice of fraud upon an ignorant and feeble-minded Indian for grossly inadequate considerations.

Demurrers of the present appellees were sustained, the bill thereupon was dismissed in so far as it concerned their interests (R., 78), and an appeal to the court below was prosecuted from that decree. The other defendants, viz, A. W. Abrams and The Iowa and Oklahoma Mining Company, claiming interests separate and distinct from those claimed by the appellees, also demurred; but their demurrer was overruled and the cause thereafter proceeded in the trial court as to them in a manner not revealed by the present record.[1]

The facts are as follows:

The Indian, Charley Quapaw Blackhawk, was a member of the Quapaw Tribe, a small tribe of less than 300 individuals, for whom and in common with the Wyandottes, Senecas, Confederated Peorias, Miamis, Ottawas, Eastern Shawnees, and Modocs, the Government maintains an agency with schools, etc., in the northeastern portion of Oklahoma. (See annual reports, Department of the Interior, Commissioner of Indian Affairs, years 1897, p. 133; 1898, p. 149; 1899, p. 278; 1900, p. 224.)

The tribal lands of the Quapaws, which had been set aside and guaranteed for them by the treaty of May 13, 1833, 7 Stat., 424, 2 Kapp., 395

[1] This branch of the cause ended in a decree for the plaintiff, taken *pro confesso*, a copy of which we give as an appendix, *infra*. A certified copy will be handed to the clerk.

(for other treaties see 7 Stat., 176, 2 Kapp., 160; 7 Stat., 232, 2 Kapp., 210; 15 Stat., 513, 2 Kapp., 960), were allotted in pursuance of the act of March 2, 1895 (28 Stat., 907), which ratified a tentative partition by the tribal council (see R., 4), and authorized the Secretary of the Interior to issue patents to the allottees, with the proviso:

> That said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents.

The land in controversy, consisting of 200 acres, was allotted under that statute to Charley Quapaw Blackhawk, whose patent, dated September 26, 1896 (R., 5, 50) repeats the statutory proviso.

The appropriation act of June 10, 1896, ch. 398 (29 Stat., 321), provided, p. 331:

> That the allottees of land within the limits of said Quapaw Agency are authorized to lease the same for a term not exceeding three years for farming purposes, or five years for mining or business purposes.

The appropriation act of June 7, 1897 (30 Stat., ch. 3, p. 72), provided:

> The allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees and tenants shall have the right to employ such assistants, laborers, and help from

> time to time as they may deem necessary: *Provided,* That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee can not improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms and conditions as shall be prescribed by him. All acts and parts of acts inconsistent with this are hereby repealed.
>
> That the adult allottees of land in the Peoria and Miami Indian Reservation in the Quapaw Agency, Indian Territory, who have each received allotments of two hundred acres or more may sell one hundred acres thereof, under such rules and regulations as the Secretary of the Interior may prescribe. (R., 5.)

The bill avers that the allottee executed mining leases and contracts for the disposition of the rents and royalties as follows:[1]

(1) A lease dated January 11, 1902, in favor of A. W. Abrams, for the full term of ten years from the date of the lease, for a bonus of $10 and a royalty of 5 per cent of the value of all minerals, etc., produced, except gas, for which a rent of $40 per annum was to be paid for each "paying

[1] Copies of the instruments were attached to the bill as exhibits but are separated in the record due to negligence in preparing the papers for the Court of Appeals. Our references will guide the court to the copies as well as to the descriptions contained in the bill.

well." Under this lease the 5 per cent royalty was to be paid monthly, and the lessee was to pay an annual rental of $20 in lieu of the 5 per cent royalty until the royalty came to exceed that sum. (R., 5, 51.) This lease was assigned by Abrams to the Iowa and Oklahoma Mining Company August 13, 1903. (R., 6, 53.)

(2) A similar lease, to Abrams, dated August 24, 1903, to run for 10 years from date; cash bonus $18; royalty 5 per cent; rent in lieu $21 per annum. This lease provides: "All leases or parts of leases heretofore made, are by mutual consent cancelled, and annulled and abrogated." (R., 6, 53, 58.) It was assigned by Abrams to the Iowa and Oklahoma Mining Company November 2, 1904. (R., 7, 55.)

(3) A lease dated March 25, 1905, in favor of L. C. Jones and A. J. Thompson for the term of ten years from date, for a cash bonus of $10 and 5 per cent royalty on the output. No rent in lieu. This lease is declared to be: "Subject to prior mining lease, executed by said first party Jan'y 1, 1902, unto A. W. Abrams." The lessee, Jones, assigned his interest in this lease to Thompson July 31, 1905. (R., 7, 56.)

(4) A lease similar to numbers 1 and 2 *supra,* dated April 4, 1905, in favor of the Iowa and Oklahoma Mining Company for a term of 10 years from date. The cash bonus is $25; the royalty 5 per cent, and the rent in lieu $21 per

annum. It makes no reference to prior leases. (R., 8, 58.)

(5) A lease similar to numbers 1, 2 and 4 *supra,* dated May 12, 1906, in favor of the Iowa and Oklahoma Mining Company, for a term of 10 years from date. Cash bonus $25, royalty 5 per cent, rent in lieu $21 per annum. This lease further provides as follows:

> Provided, that it is expressly understood and agreed by and between the parties hereto, that the execution and delivery and acceptance of this lease shall not in any manner be construed as a waiver or relinquishment by the lessee of any rights, title, interest or claim which it now holds, (own) or enjoys under and by virtue of prior leases held by it upon the lands above described, which leases are recorded within the office of the Deputy Clerk and Ex-Officio Recorder in and for the First Recording District of Indian Territory, at Miami, in Book "Q" at page 558, in Book "S" at pages 55 and 177, and this lease and all former leases above referred to shall run concurrently; that it is expressly declared that no merger of the (lessee) above referred to into each other or into this lease is contemplated by the execution of this lease, and that the said party of the second part may elect under which of the leases it holds upon the lands above described that it will operate and make payments to said first party, and that the payments and performances by said second

> party under either of the leases it holds upon said lands shall be in full payment and satisfaction of all requirements and conditions set forth in said several leases held by it upon said land for the term of said respective leases above referred to.

(6) A lease similar to the one last mentioned, dated July 28, 1906, in favor of the Iowa and Oklahoma Mining Company for the term of 20 years from date. Cash bonus $21; no increase of royalty or annual rent in lieu. By a proviso like the one contained in number 5, this lease declares that it "shall run concurrently" with leases numbers 2, 3 and 5 *supra,* etc. (R., 10, 63.)

A contract dated August 16, 1902, whereby the Indian assigned, transferred and set over to Charles F. Noble all his right, title and interest in and to the royalty, rent, and proceeds of the mining lease executed in favor of Abrams January 11, 1902, *supra.* This contract contained the following:

> It is further agreed and understood by Charles Quapaw Blackhawk that if the A. W. Abrams lease should be surrendered and become void the within lease shall hold good for the period of ten years (10).

Noble, on the same date, assigned one-half interest in the contract to John M. Cooper. (R., 12, 66.)

The bill further alleges that on February 21, 1906, Blackhawk executed a contract whereby he

attempted to assign to A. S. Thompson and V. E. Thompson one and one-fourth per cent of the entire product mined from said land from January 1, 1906, up to and including January 11, 1912. (R., 13, 67, 68.)

The utter incompetence of the Indian to protect himself in these complicated transactions, or even to understand their nature, is revealed by paragraph X of the bill (R., 11) which alleges:

> Your orator further shows that the said Charley Quapaw Blackhawk is a full blood Quapaw Indian, of the Quapaw tribe; that he was born in 1835; that at the time of the execution of all of the mining leases and contracts hereinbefore set forth he was, and now is unable to read, or write, or understand intelligently the English language; that during all of the times mentioned in this bill of complaint he was, and now is an ignorant and uneducated child of nature and entirely unable to comprehend relative values or to calculate the future values of present property or interests, and during all of the said times he was old and infirm and wholly incapacitated for the transaction of business; that the lands hereinbefore mentioned were at the time of the giving of all of the mining leases or contracts hereinbefore set forth, of great value, and now are worth approximately one hundred thousand dollars.

The reason for conceding validity to the first lease (which was not attacked), will be seen in the following averments (R., 11):

> Your orator further shows that on January 11th, 1902, when the valid mining lease, set forth in paragraph IV, was made, executed and delivered, the lands hereinbefore mentioned had not been prospected and the value thereof, for mining purposes was uncertain and undetermined, and the consideration of a royalty of five (5%) per cent of the value of the ore taken from the said lands during the life of the said valid lease was, and is an equitable and sufficient consideration therefor.

The bill, however, at once proceeds to show that the great value of the property and the inadequacy of the 5% royalty had become demonstrated and known to the defendants before the other leases were taken, and that they, in procuring them, unconscionably and fraudulently took advantage of the ignorance and incapacity of the Indian, viz (R., 11, 12):

> But your orator shows that immediately after the giving of the said lease the defendant A. W. Abrams caused the said lands to be drilled and prospected, and found thereon large, valuable and paying bodies of lead and zinc ore; that as early as 1904 the discovery of these valuable and paying bodies of ore was so certain and of so great richness and value that large mills or concen-

trating plants were erected upon the said land for the purpose of mining and concentrating the said lead and zinc ore; that there are now, and have been for the last five years past, a number of concentrating plants or so-called " ore mills " located upon the said lands and in operation, and the annual value of the output thereof, when in operation, is in excess of fifty thousand dollars per annum; that on January 19th, 1905, and before, the said A. W. Abrams, through his assignee The Iowa and Oklahoma Mining Company, sub-let and sub-leased to other mining companies portions of the lands hereinbefore mentioned, for a consideration of, and under contracts and leases drawing the sum of fifteen (15%) per cent of the market value of the ores mined upon the said lands, and your orator alleges that fifteen (15%) per cent royalty is a fair and reasonable consideration or royalty to be paid, and has been ever since the 1st day of August, 1903; that on August 24th, 1903, and at and during all of the dates herein mentioned, the said defendants and each of them respectively, well knowing the value of the mineral deposits in said lands, and the ignorance, incompetency and incapacity of the said Charley Quapaw Blackhawk, and his entire inability to comprehend values, fraudulently took advantage thereof, and respectively procured him to sign those certain writings hereinbefore set forth in paragraphs V, VI, VII, VIII, and IX, and

> their said acts in so doing were inequitable and unconscionable and a fraud upon the said Charley Quapaw Blackhawk, and upon your orator, and should, because of the said reasons, by this court be set aside and canceled and held for naught, and so your orator prays.

The prayer is for the annulment of all the leases, except the first, and assignments thereof, and the annulment of the assignments of rents and royalties, and for the quieting of the title, etc.

Joint demurrers were filed by Abrams, Noble, Cooper, A. J. Thompson and the Iowa and Oklahoma Mining Co. (R., 21); by Abrams and the Mining Company (R., 25), and by A. S. and V. E. Thompson (R., 23). In passing on these, the circuit court, in a lengthy opinion (R., 28) denied the right of the Government to attack any of the transactions on the ground of fraud, and, confining the case to the leasing statute, pronounced against the leases numbered 5 and 6, *supra,* as violative of its terms, but upheld lease number 3, to Jones and Thompson, lease number 4, to the Mining Company, and the assignments of rent and royalty. Leases number 1 and 2, *supra,* (both to Abrams and assigned to the company), were treated as surrendered by the acceptance of number 4. The invalidity of number 5 was found in the provision (quoted above) that it should run concurrently with the earlier leases then held by

the company; and the invalidity of number 6 was found in the excessive term of 20 years.

Accordingly the demurrers filed by Abrams and the Mining Company were overruled, and those interposed by the other five defendants (appellees here) were sustained (R., 40), and as to them a decree was entered dismissing the bill, from which the appeal was prosecuted.

In the circuit court of appeals the decree was affirmed by a divided court. (R., 83.) Circuit Judge Adams filed a dissenting opinion (R., 86) in which he said:

> The practice of securing overlapping leases for the same tract of land seems to me to be a device or expedient to circumvent the obvious purpose of the act of Congress. According to it one person may not only secure, but may from the beginning intend to secure, a lease of mining land for periods of time in the aggregate far in excess of that which Congress permitted. This enables an Indian to contract away his right of possession and enjoyment and his reasonable expectation for the future, contrary to the manifest policy of Congress. It opens a door to easy fraud upon the unsuspecting Indian and upon the law.
>
> The answer to the conclusion I have reached, as I understand it, is that the Indian has never in fact made a lease for a term exceeding ten years for mining purposes, and that however many he may have

> executed he is still within the letter of the law. He may be within the letter, but, in my opinion, he is not within the spirit of the law.

Judge Adams, however, agreed with his associates, Judges Smith and Marshall, in holding that the assignments of rents and royalties were not subject to attack.

Errors relied on.

The transactions directly involved in this appeal are:

The lease to the appellee A. J. Thompson and L. C. Jones, numbered 3 *supra*, the assignment of rents and royalties claimed by the appellees Noble and Cooper, and the similar assignment claimed by the appellees A. S. Thompson and V. E. Thompson.

We contend that the lease to A. J. Thompson and Jones was invalid both because it exceeded the permission of the leasing statute and because it was procured by fraud, and that the alleged assignments were invalid for the first of these reasons, if not for the second; and that the court below erred in its contrary interpretation of the leasing statute and in holding that the Government had no standing to bring suit in its own name on behalf of the Indian to challenge the transactions on the ground of fraud.

ARGUMENT.

I.

The leasing act of June 7, 1897, creates but a special and narrow exception to the general prohibition against alienation declared in the allotment act of March 2, 1895. Reasonably construed, with due regard for the policy evinced by the earlier act, the leasing act does not permit the making of plural leases, whether to the same or different parties, or leases to take effect in futuro.

1. *The purposes of the leasing act—to bring personal training and pecuniary or other material betterment to the Indian—are thwarted by the loose construction adopted by the courts below.*

The act relaxes, to a limited extent, the restriction which (by virtue of the act of March 2, 1895,) was created with the title. It does not abolish the restriction but presupposes its continuance subject to a modification. As it does not abolish the restriction, the act is to be taken as a declaration that, generally speaking, the *reasons* which produced the restriction have not been done away with. In other words, generally speaking, the Indian is still *inops consilii;* he can not be trusted with the dominion; but he is to be tried with a limited power.

The result of this thought is to require that the power be construed strictly rather than loosely. If the full right of alienation would be dangerous, the power to let will be dangerous also. Improvidently used the one will squander the

whole estate; the other will squander the possession and usufruct and may bring about irreparable waste. The difference is largely a difference of degree.

The purposes of the act may be assumed to be, to test and improve the capacity of the allottee, and to enable him, through the industry of others, to derive an income from his land and promote its development. The purpose looks to his benefit, personal and material, and to that alone.

Respecting this purpose, and bearing constantly in mind that the act was intended to open the door just wide enough to reach it, one can have little hesitation in concluding that nothing could have been farther from the design of Congress than to tolerate such absurd and disastrous transactions as occurred in this case.

The allottee leased his allotment of 200 acres six times, and, if its assignments of rents and royalties are to be regarded as leases, eight times within the space of four years and six months, five times for the full term of ten years and once for the term of twenty years. The first lease, made to Abrams on January 11, 1902 (R., 51), brought him $10 down, and the lessee's agreement to pay an annual royalty of 5 per cent of the market value at the place of mining or production of " all lead, zinc, and all other minerals or substances whatever " that might be mined or removed. There was a separate stipulation to pay him $40

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per annum for each paying gas well, and another to pay him $20 per annum if the royalties did not exceed that amount. This, according to the bill (R., 11), was a fair enough lease at the time, because then the land had never been explored, and its mineral value was problematical. But even this lease (which is not attacked) seems upon its face an improvident one since it laid no obligation upon the lessee to prospect or mine, and permitted him to hold the land for ten years on speculation, by paying only $20 per annum. However this may be, the lessee did in fact prospect and drill immediately and found " large, valuable and paying bodies of lead and zinc ore." (R., 11.) By August 1, 1903, the value of the land was so well demonstrated that then and since, the bill alleges, the fair and reasonable royalty would have been 15 per cent and subleases were actually made at that rate. Large concentrating plants were erected on the land in 1904, and since July 26th of that year (i. e., for five years before the filing of the bill) (R., 11, 19) these have been in operation producing an output worth more than $50,000 per annum.

Quite oblivious apparently to what had been going on in the meantime, the Indian, on August 24, 1903, made his second lease to Abrams (R., 53), for ten years from date, for the same royalty of 5 per cent. For this concession he received a bonus of $18 (or so it is recited) and the annual payment in lieu of royalty was raised one dollar. This

lease purports to abrogate all previous leases, although the first lease had been assigned by Abrams to the Iowa and Oklahoma Mining Company (R., 6, 53) " for valuable consideration " only eleven days before.

The next step occurred March 25, 1905, when the Indian, for $10 in hand and a promise of 5 per cent of the money proceeds of all ores to be mined and sold, demised the premises, again for 10 years, to L. C. Jones and the defendant A. J. Thompson. At this time the second lease to Abrams (assigned to the Iowa and Oklahoma Mining Company on November 2, 1904, R., 7, 55) had still eight years and six months to run, and the first, if not abrogated by the second, was likewise outstanding. Large mills were in operation on the lands, the deposits were being actively mined and treated, and the output in money value was very large. Jones and Thompson were strangers to the other leases under which the land was in occupancy and in process of exploitation. In legal effect their instrument, if valid, was a demise of the reversion, to fall into possession eight and one-half years in the future, and remain effective for one and one-half years thereafter, or to take effect sooner, perhaps, if the right of the other lessees should be cut short by surrender or forfeiture. Jones and Thompson obtained the speculative title for $10. They entered into no covenant to develop the land; they did not agree to make any annual payment in lieu of royalty, but they expressly reserved to

themselves the privilege to remove any improvements that they might see fit to put upon the premises.

The fourth lease (R., 58) was made on April 4, 1905, to the Iowa and Oklahoma Mining Company. This is in form quite the same as the prior leases to Abrams. The bonus is $25. The term is for ten years from date, the royalty stipulated is still 5 per cent of the value of all lead, zinc and other minerals, etc., at the place mined or produced, and the annual payment in lieu of royalties is $21 per annum. The prior leases are not referred to.

The fifth lease, again to the Iowa and Oklahoma Mining Company, was dated May 12, 1906, and, like the fourth, recites payment of the sum of $25 to the Indian. The royalty is still 5 per cent and the annual payment in lieu thereof $21. There is no covenant to mine or improve. It provides (R., 61) that it shall not operate as a waiver of prior leases held by the company which are referred to by book and page of the county records, and may be identified through the bill as the first, second, and fourth leases, and expressly declares that it shall run concurrently with them, and that the lessee may elect the one under which it will operate and make payments, and that payment and performance under any shall satisfy the requirements of all.

The sixth lease made on July 28, 1906, to the same company (R., 63) recites a bonus of $21. It

repeats the provision respecting prior leases contained in the fourth lease, and extends the provision to cover that lease also. The royalty is still 5 per cent and the other stipulations also remain unchanged, except the term, which is enlarged to twenty years from date.

To cap the climax, the bill shows (R., 12, 66) that on August 16, 1902, the Indian, "for value received," sold all his rents and royalties for a term of ten years and that, on February 21, 1906, he made a smilar assignment of 1¼ per cent of the whole product of the land from that date to January 11, 1912. (R., 13, 68.)

From this review it will be seen that, although, under the first lease, the actual rental value of the land had been quickly demonstrated to be three times the royalty originally stipulated, the Indian continued to lease, again and again, to the parties in control of the property, upon the old terms. In this he was deprived of the advantage which the act of Congress must have been intended to preserve. Whether in the case of this particular Indian, owing to his utter incompetency and helplessness, the same improvidence might have been exhibited if the first lease had been done away with entirely before the premises were let the second time, is a conjectural matter of no materiality to the case. We deal with the general tendencies of permitting the persons in possession to solicit and obtain virtual extensions while the relation of lessor and lessee continues, and of leases timed to

take effect in the future (or leases of the reversion), and the bearing of these tendencies upon the objects of the leasing statute. An Indian, too inexperienced and incompetent to be allowed the full control of his property, is at a disadvantage always in dealing with astute white men. When he leases them his land this disparity will be increased by the fact of their possession and may be very greatly increased by the terms of the lease itself, which normally will be drawn in their interest rather than in his. In this case, for illustration, the Indian became dependent upon the industry and good faith of his lessees. They obtained the exclusive control for the period of ten years. They could accelerate or check the output at will, and thus vary his income from a considerable royalty to the paltry annual payment. Their knowledge of the value of the product and of the ores in place was, presumably, the knowledge of experts familiar with every detail; his was the knowledge of an incompetent, feeble-minded, Indian. Their peculiar ability to drive a hard, unconscionable bargain was largely dependent, however, upon the fact that their lease had many years to run. Under such circumstances there could be no real competition for a new lease. Strangers, with no opportunity to examine the property and with no means of knowing what a new lease would be worth when the time came to enjoy it, could not be expected to venture into the field unless at nominal risks in the spirit of gamble and specula-

tion. To allow the Indians to lease in such circumstances is to submit them to the rapacity of superior minds and encourage them to traffic with the mere speculator, parting with their birthright for a mess of pottage.

The district judge correctly saw in the statute the two purposes which we have indicated—to introduce the Indians to business experience and enhance the usefulness to them of their allotments. He saw, too, that to permit one lease to be grafted upon another held by the same lessee was in practical effect to uphold a single lease for the entire period covered by both, and this thought compelled him to reject the fifth lease (to the Iowa and Oklahoma Mining Company), because it attempted to continue three prior leases (the first and second, to Abrams; and the fourth, to the company), and permitted him to uphold the fourth lease only upon the hypothesis that its acceptance worked an implied surrender of the first and second. It did not, however, prevent him from sustaining the third lease, to Jones and Thompson (the one here directly in controversy), despite its reversionary character, nor did it save him from the manifest inconsistency of permitting plural, overlapping leases, each for the full term, to different lessees. The majority opinion in the court below proceeds upon even looser conceptions. Under that opinion the question of surrender is immaterial; the Indian may make any number of concurrent leases to the same or independent lessees, and every one

will stand effectual if it does not in itself exceed the statutory period.

2. *The leasing power should be construed strictly.*

The act permits the allottees to lease "for *a term* not exceeding three years," etc. If these words were to be taken literally the power would be exhausted by one exercise. We do not contend for this, but we do contend against a lax construction.

(*a*) As was well said by the trial court, "wherever an act under consideration is fairly capable of more than one construction, that construction should be given most favorable to the Indian." (R., 35.)

Starr v. *Long Jim*, 227 U. S., 613, 623.

"No doubt" (to quote again from Judge Campbell's opinion), "Congress conceived that it would be for the welfare of the Indian to take upon himself [a] limited responsibility regarding his land." (R., 33.) But Congress did not conceive, and it is hard to imagine how anyone could conceive, that it would be for the welfare of the Indian to induct him into business dealings under circumstances that placed him at a gross disadvantage and endangered the substance of his estate. What Congress really conceived was that the welfare of the Indian demanded, first of all, a continuance of Federal protection, and, secondarily, such a measure of informing freedom as might consist wth his declared incapacity.

(*b*) The general policy of protecting the Indian resolves every reasonable doubt against a power in him to dispose of his estate. So, in effect, it was held by this court in the recent case of *Taylor* v. *Parker,* 235 U. S., 42.

(*c*) The allotment was inalienable for the period of 25 years from September 26, 1896, the date of patent (*Bowling* v. *United States,* 233 U. S., 528). But for the authority granted by the act of June 7, 1897, any and every attempt to lease the land would be absolutely void. That act makes a particular exception from the general prohibition, which was originally an absolute prohibition. The particular act is of course to be construed with the general act, and, so far as possible, in harmony with it. The later act should not be allowed (if it be avoidable) a meaning calculated to undermine and defeat the basic *purpose* of the earlier act which, concededly, is not attempted to be repealed, but only modified.

In both of the opinions below the error lies in assuming that, *quoad* the leasing power, Congress intended to allow to the incompetent Indian all the latitude of action which the general law allows to a competent white man in dealing with his own property. Both, in result if not in words, ignore the self-evident proposition that if these Indians were not deemed generally incompetent, the restraints affecting their lands would have been removed altogether.

If the act of 1897 were itself a restrictive statute, it might be construed liberally in favor of the right of alienation if it related to the affairs of white men, though we regard the theory that such a construction should obtain in the case of the Indians as a dangerous fallacy, discountenanced by recent decisions of this court. But it is not a restrictive statute; it is an *enabling* statute, which may not be loosely construed without disregard of the earlier, prohibitive statute which it was intended to modify but not to destroy.

3. *The conclusion of the court below tends to defeat the purpose of the proviso in the leasing act, respecting the power and duty of the Secretary of the Interior to make leases for incapable Indians.*

The proviso is:

> That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee can not improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms and conditions as shall be prescribed by him.

The secretary exercises this power *by making a lease,* and he can not exercise it advantageously while other leases with years to run are outstanding. If it is permissible for the Indians to add lease upon lease as was done in this case, the

process may be continued indefinitely so that the time when the Secretary may offer the possession to a tenant of his own selection will be continuously and indefinitely postponed. To check the process he would be obliged to lease for a term to begin in the distant future, which, generally, would entail a sacrifice in rent. The *proviso* does not serve to authorize the Secretary to disqualify the Indian in any other way.

4. *The lease to Jones and Thompson was either a reversionary lease intended to take effect in futuro or a concurrent lease based upon an assignment in part of the reversion. In either event it exceeded the leasing power construed in the light of common law rules.*

This lease (R., 56) is expressed to be "from date hereof [March 25, 1905] until March 25, 1915," the full term of ten years, and subject to the first lease to Abrams.

The allottee was in a position analogous to that of a tenant for life equipped with an express power to lease for a definite term of years. Such a tenant must exercise the power with proper regard to the rights of the reversioner or remainderman. The allottee, whose title was subject to a restriction which ran with the land, for the benefit of his heirs as well as of himself (*Bowling* v. *United States,* 233 U. S., 528), was under a similar duty.

In 4 Greenleaf's Cruise's Digest, pp. *165, *166, it is said:

> Where a power is given indefinitely to make leases, without mentioning the time when they are to commence; it shall be taken strictly against the donee of the power, and consequently be construed so as only to authorize leases in possession, and not leases in reversion. * * * A power to make leases generally, does not authorize the donee to make a lease to commence after the determination of a lease in being; for it has been observed that such a lease is reversionary in the strictest sense.

See *Taussig* v. *Reel,* 134 Mo., 530, 544, in which, upon review of many authorities, this rule was applied, and in which the court declared (p., 547):

> Nor does the fact that at the time of the execution of the lease the tenant then in possession of the premises was holding under an unexpired term, and that the unexpired time of the lease under which the tenant was then holding together with the time fixed by the new lease, do not in point of time exceed fifteeen years, the limit fixed by the power, operate to make the latter a continuation of the former lease.
>
> *Sinclair* v. *Jackson,* 8 Cow., 543, 581.
>
> 2 *Sugden on Powers,* *345.

A concurrent lease is defined as "one granted for a term to commence *before* the expiration or other determination of a previous lease of the same

premises to another person." 1 *Woodfall, Landl. & Ten.*, *211.

The lease to Jones and Thompson was doubtless such a lease.

Sugden, loc. cit. pp. *376 *et seq.*, contends that such leases can not be sustained under a general *enabling power.* While he sustains plural leases to the *same tenant* upon the ground that the first is surrendered by acceptance of the second (p. *381), he observes (p. *379):

> But, as we have seen, a concurrent lease is not a lease *in esse.* When the lessor hath made a lease, he hath nothing but in reversion during that time, and hath not authority to contract for the possession, for the lessee has the land and the possession, and therefore during the continuance of the lease his contract for any part of the term is a void contract in law and in fact, but only good by estoppel between the parties and those that come under the estoppel.

Woodfall observes (*ubi supra*):

> If under seal it operates as an assignment of part of the reversion during the continuance of such previous lease, and from thenceforth as a lease in possession during the residue of the time therein expressed to be granted. It entitles the lessee, *as assignee of part of the reversion,* to the rent reserved in the previous lease, and to the benefit of the covenants therein contained, which are to be respectively paid and performed during the then residue of the term granted by

> the first lease, and the continuance of the concurrent lease. Formerly a concurrent lease was inoperative to pass any estate during the prior term, unless the attornment of the previous tenant could be obtained, when it would operate as an assignment of the reversion, &c. Now no attornment of the tenant in possession is necessary; but until he has notice of such assignment he may safely continue to pay his rent to the lessor who will, however, be liable over to the second lessee for so much money had and received for his use. If a concurrent lease be granted to and accepted by the *same lessee*, it will operate as an implied surrender by him of his previous term, and take effect as a lease in possession for the term thereby granted. The reason is that the same person can not be, at the same time, both tenant and reversioner of the same premises.

We submit that it would be a gross abuse of the leasing privilege and a violation of its evident design, to induce these Indians to make leases timed to take effect in the distant future. And it is equally plain that, one lease being *in esse*, a second can not be sustained as a concurrent lease without implying a power in the Indian, which he does not possess, to dispose of the reversion.

5. *Reference to decisions in certain analogous cases.*

United States v. *Abrams*, 194 Fed., 82, is referred to and distinguished by Judge Adams in his dissenting opinion herein. It involved a lease to

Abrams and three to the Iowa and Oklahoma Mining Company, the last of which was sustained because the others before it was taken had been *expressly surrendered.*

Whitham v. *Lehmer,* 22 Okla., 627 and *Scraper* v. *Boggs,* 27 Okla., 715, apply the rule that where the first lease is void, or is surrendered, a second may be taken for the prescribed period. The statutory provision involved was section 17 of the Act of June 30, 1902 (32 Stat., 504), permitting leases of Creek allotments.

These authorities are not opposed to our position, except in so far as they assume, without attempting to prove, that leases to commence *in futuro* are unobjectionable.

Scherer v. *Hulquist,* 39 Okla., 434, construing the same Creek statute, sustains overlapping leases, and is the only authority to that effect which has come to our notice, other than the decisions in the present case. The decision is based upon the *Abrams case, supra,* which, for the reason above indicated, is wholly inapplicable; upon *Moore* v. *Girten,* 5 Ind. Ter., 384, in which the question was expressly avoided to make place for a (clearly erroneous) decision upon an independent ground of no interest here; and upon the decision of the court below which we now seek to review. *Scherer* v. *Hulquist,* therefore, simply following the case at bar, is not to be regarded as an influential precedent; nor does the opinion shed any light upon the problem presented.

II.

The Indian had no power to assign the rents and royalties.

Rent is an attribute of the reversion—a part of what is left of the lessor's original estate. The right to collect it attaches to the land and, when the owner dies, descends with the reversion to his heirs, and not to his personal representatives. *Washburn on Real Property,* vol. 1, secs. 699–702, and numerous cases there cited.

> When a man *seised in fee* makes a gift in in tail, or lease for life or for years, reserving rent, the whole rent which becomes due after his death, shall go with the reversion (as an incident thereof) to his heir, and not to his executor; for since during the continuance of the particular estate the reversioner loses the profits of the land, the rent ought to be paid to him as a compensation for the loss. And though the rent should be expressly reserved to the lessor, his executors and assigns, without naming the heir, the executors can not have it, being strangers to the reversion which is an inheritance. *Williams on Executors* (Perkins' Ed. 1877), vol. 2, p. 893.
>
> There were some covenants, that, for instance, to pay rent, which raised a liability against the tenant in favor of an assignee of the reversion at the common law, the remedy being in debt but not in covenant, as the only privity between the parties was *in estate* and not in contract.

Washburn Real Property, vol. 1, sec. 672, citing *Thursby* v. *Plant,* 1 Saund., 240; *Patten* v. *Deshon,* 1 Gray, 325.

Rent is an incident of the reversion until it becomes both "*debitum et solvendum*". *Burns* v. *Cooper,* 31 Pa. St., 426.

We do not question that one who owns without restriction may let to A for a term and thereupon assign the rents to B. Having complete *jus disponendi,* he may convey his entire reversionary estate if he chooses. But one who is forbidden to convey the reversion as a whole is equally forbidden to convey it in part.

In this case the original restriction upon the alienation of the land adhered to every part of the estate which remained in the Indian after the lease was made. The restriction was for the benefit of his heirs as well as for his own. If he were allowed to dispose of the rent, by parity of logic he would be authorized to dispose of the rest of the reversion, and thus, through the magic of a very limited permission to make leases, he might squander the entire inheritance. The danger of the lower courts' ruling draws emphasis from the fact that the royalties attempted to be assigned represent the very substance of the land. In ten years all the mineral might be extracted and the value of the land thus destroyed.

The learned courts below failed to distinguish the rent (and royalty representing it) from the cash which comes to hand (and which the Indian

may spend as he pleases) when rent has accrued and is paid. Possibly they were misled also by the thought that, in making his lease, the Indian might grant the term for an immediate cash payment or for nothing. For answer to this it is enough to suggest that considering the words and the clear purposes of the statute, the reservation of a rent affording an income during the term for the benefit of the heirs as well as the allottee, was expected; and that even the conviction that this was not compulsory would afford no excuse for ignoring the legal consequences of what was actually done.

There is another and distinct reason why the assignments are bad. The first assignment, of whose nature the second partakes (R., 66–68), provides that if the lease to Abrams to which it refers "should be surrendered and become void the within *lease* shall hold good for the period of ten years." They are therefore leases, virtually, and subject to all the objections which we have heretofore expressed.

III.

The government was authorized to bring suit in the name of the United States for the purpose of setting aside the fraudulent leases.

1. *Omission of the bill to charge fraud specifically respecting the assignments of royalty.*

If this was an oversight (as was claimed in his brief by the counsel who represented the govern-

ment in the courts below), it could have been rectified by an amendment, if the Circuit Court had not denied *in toto* the right of the government to invoke the jurisdiction on the ground of fraud. Neither the bill nor the instruments of assignment reveal the value (if any) of what was rendered to the Indian by way of consideration.

The bill, however, does allege (R., 12) as to all of the defendants, that at all times they knew the value of the mineral deposits, and the ignorance and helplessness of the Indian, and "fraudulently took advantage thereof" in procuring the leases.

In these circumstances, if the court should be disposed to hold that the direct charge of fraud should have been entertained respecting the leases, the decree, we submit, should be reversed as a whole, so that an opportunity may be given to inquire whether the assignments of rents and royalties (if not void under the statute,) were fair to the Indian, or whether, like the leases, they were "inequitable and unconscionable." (R., 12.)

2. *The Indian was a ward of the Government, whose protection, particularly in respect of the allotment, had not been committed to the laws of the State.*

The peculiar provision of the general allotment act of 1887 declaring that the allottees thereunder should "have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they reside," which was the basis

of the decision in the *Matter of Heff*, 197 U. S., 488, is inapplicable to these Oklahoma Indians, allotted under a different statute in a different way. *United States* v. *Celestine*, 215 U. S., 278, 290.

In *Goodrum* v. *Buffalo*, 162 Fed., 817, the learned court below observed:

> In the case of the Quapaw Indians, who manifested reluctance to disrupt their tribal relations and to relinquish their reservation to the government, with a view to allotment in severalty, the National Council assented to the proposal March 23, 1893, which was ratified and approved by act Cong. March 2, 1895, c. 188, 28 Stat., 907, which provides that:
>
> "The Secretary of the Interior is hereby authorized to issue patents to said allottees in accordance therewith: provided, that said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents."
>
> This was in accordance with the settled policy of the government of continuing these wards of the nation in a state of comparative tutelage for the further period of 25 years after such allotment as essential to their education and qualification to intelligently and safely exercise the jus disponendi over their lands, with the exception that under the supervision and approval of the Secretary of the Interior short term leases might be made. As evidence of the fact of the continued wardship of the Qua-

paw Indians and their dependence upon the national government for guardianship and tutelage, Congress each year makes appropriations out of the public treasury for their education, blacksmith and assistants, and tools, iron, and steel for blacksmith shops.

See, also,

Bowling v. *United States,* 233 U. S. 528, 534;

United States v. *Pelican,* 232 U. S., 442, 450, 451;

Perrin v. *United States, id.,* 478, 481, 486;

Oklahoma Enabling Act (34 Stat., 267), ch. 3335, sec. 1;

Ex parte Webb, 225 U. S., 663, 682.

3. *The general policy of Congress evinced in the restriction on alienation is violated by a fraudulent abuse of the leasing privilege.*

Heckman v. *United States,* 224 U. S., 413, upholds the authority of the executive branch to bring suit, in the name of the United States, to set aside conveyances taken in defiance of the statutory restrictions upon alienation. It was there held that citizenship of the Indians is " in no wise inconsistent with the retention of control over the disposition of the allotted lands " (p. 436); and that " during the continuance of this guardianship," (evinced by the restrictions,) " the right and duty of the Nation to enforce by all appropriate means the restrictions designed for the se-

curity of the Indians can not be gainsaid" (p. 437). Again it was said (*ib.*):

> This national interest is not to be expressed in terms of property, or to be limited to the assertion of rights incident to the ownership of a reversion or to the holding of a technical title in trust.

And, speaking of the allottees, (p. 438):

> It was the intent of Congress that, for their sustenance and as a fitting aid to their progress, they *should be secure in their possession during the period specified* and should *actually hold and enjoy the allotted lands*. As was well said by the court below, "If they are unable to resist the allurements by which they are enticed into making the conveyances, will they be expected to undertake the difficult and protracted litigation necessary to set aside their own acts? To ask these questions is to answer them. Congress intended that both the Indians and the members of the white race should obey its limitations. A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States. If these Indians may be divested of their lands, they will be thrown back upon the Nation a pauperized, discontented and, possibly, belligerent people." The authority to enforce restrictions of this character is the necessary complement of the power to impose them.

We submit that the doctrine of that case is clearly applicable to this. Congress intended that the Indian whose estate is here involved and his heirs should hold and enjoy not merely the title but also the possession and fruits of his allotted lands. Under color of a limited permission to lease, and by the perpetration of a gross, unconscionable fraud, he has been swindled out of the possession for many years and deprived of the very substance of his property. To tolerate such transactions could not have been within the contemplation of Congress when the leasing act was passed, and those who are guilty of the outrage should be estopped to set up the protection of that statute.

The proviso in the leasing act, to which we have already referred, amounts to an express declaration that incapables, like the Indian Blackhawk, may enjoy the leasing power only through the protecting supervision of the Secretary of the Interior. These defendants were charged with notice of the proviso; and the bill avers that they knew the helpless condition of the allottee.

But even if the proviso had been omitted, it would still be plain enough, we submit, that the permission to make leases was not an abandonment of the national protection and control over the land except in so far as leases might actually be made in conformity with the conditions express and implied of the leasing act; that to pro-

cure a lease by a fraud on a helpless Indian is to deprive him *pro tanto* of his land in a way never authorized or intended by Congress; and that such a lease is therefore an alienation which, not being authorized by the leasing act, is just as much a violation of the original and continuing restriction as though the leasing act had never been passed.

If the foregoing propositions be sound, then it follows, as of course, that the authority to bring and maintain suits is not confined to the Indian himself, as was held below.

> There can be no more complete representation than that on the part of the United States in acting on behalf of these dependents—whom Congress, with respect to the restricted lands, has not yet released from tutelage. Its efficacy does not depend upon the Indian's acquiescence. It does not rest upon convention, nor is it circumscribed by rules which govern private relations. It is a representation which traces its source to the plenary control of Congress in legislating for the protection of the Indians under its care, and it recognizes no limitations that are inconsistent with the discharge of the national duty.
>
> *Heckman* v. *United States,* 224 U. S., 444–5.

To confine the right of suit to the defrauded Indian would be to place the national policy in his keeping and invite new violations to hedge about

the old. He could not be compelled to sue; he could not be restrained from dropping a suit begun.

And what would be the procedure in the case of a mental incompetent such as Blackhawk, too feeble to make up his mind? Would it be necessary for some state court to appoint a guardian or committee to think for him and decide whether anything should be done, with the assistance of the state judiciary, to enforce the settled policy of the United States?

By force of the leasing statute itself, if for no other reason, the Secretary of the Interior is made the judge of the Indian's competency, and though, as we have pointed out above, he may not thereby be empowered to fix a *legal status* of incompetency upon the Indian's person, he has affirmative power to lease for incapable Indians, and, by implication, the negative power to save them from injurious leases made by themselves. It is a fair implication that, having this power, and resting under a corresponding duty, the Secretary may bring about the institution of appropriate suits in the name of the United States, in the federal courts.

We know of no other case in which the power of the government to sue for the defrauded Indian has been authoritatively denied, neither are we aware of any, precisely like the case at bar, in which that power has been upheld. But in two recent decisions of the learned court below, announced in strong opinions by Circuit Judge San-

born, the power has been upheld and applied in ways and upon principles which, we think, are all that are necessary to warrant its application here. *United States* v. *Gray*, 201 Fed., 291; *United States* v. *Fitzgerald, id.*, 295.

The attention of the court is earnestly invited to those decisions.

CONCLUSION.

The judgment of the court below should be reversed and the cause remanded to the district court for the eastern district of Oklahoma for further proceedings.

Respectfully submitted.

ERNEST KNAEBEL,
Assistant Attorney General.
S. W. WILLIAMS,
Attorney, Department of Justice.

JANUARY, 1915.

APPENDIX.

In the Circuit Court of the United States for the Eastern District of Oklahoma.

UNITED STATES OF AMERICA, complainant, *vs.* A. W. ABRAMS, CHARLES F. NOBLE, John M. Cooper, L. C. Jones, A. J. Thompson, A. S. Thompson, V. E. Thompson, and The Iowa & Oklahoma Mining Company, a corporation, defendants.	In Equity No. 1113.

DECREE PRO CONFESSO AGAINST DEFENDANTS, A. W. ABRAMS AND THE IOWA & OKLAHOMA MINING COMPANY.

It appearing to the Court that the Bill of Complaint in the above entitled cause was filed in this Court on the 26th day of July, 1909 and that subpœnas were duly issued and served on the defendants herein, A. W. Abrams and the Iowa & Oklahoma Mining Company, and that thereafter the said defendants and each of them duly entered his appearance herein and demurrer to the Bill of Complaint, which demurrers were thereafter, to-wit, on the 5th day of December, 1910, overruled by this Court and an order therein thereafter duly made and entered, and the said defendants given until Rule Day in February, 1911, in which to

answer or further plead to the said Bill of Complaint; and the said defendants and each of them having failed to answer or to plead in any manner whatsover to the said Bill of Complaint within the time fixed by this Court,

It is hereby ordered, adjudged and decreed that the Bill of Complaint be taken as confessed against the said defendants and that the Complainant have all and singular the relief asked for against the said defendants, A. W. Abrams and The Iowa & Oklahoma Mining Company, prayed for in the Bill of Complaint.

That the mining lease made, executed and delivered by the allottee, Charley Quapaw Blackhawk, to the defendant A. W. Abrams on the 24th day of August, 1903, and by him caused to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the first Recording District of Indian Territory, then located in the City of Miami, in said Territory, and there to be recorded in book " S " on page 55, all as alleged in paragraph V of the Bill of Complaint, wherein and whereby the said Charley Quapaw Blackhawk did lease and let unto the defendant A. W. Abrams for mining purposes for the period of ten years from the 24th day of August, 1903, the following described land, to-wit:

> The Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section Thirty-two, Township Twenty-nine, Range Twenty-four East of the Indian Meridian in Indian Territory,

be and the same is hereby declared null and void and of no legal effect, and is ordered canceled of

record, together with the assignment thereof made on the 2nd day of November, 1904, by the Defendant A. W. Abrams to The Iowa & Oklahoma Mining Company, which assignment was filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the City of Miami, in said Territory, and there recorded in Book " S " on page 55 as a marginal assignment.

That the mining lease made, executed and delivered by the Indian Allottee, Charley Quapaw Blackhawk, to the defendant, The Iowa & Oklahoma Mining Company, under date of April 4, 1905, and by the said defendant caused to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the City of Miami, in said Territory, and there to be recorded in Book " S " at page 176 thereof, all as alleged in paragraph VII of the Bill of Complaint, wherein and whereby the said Charley Quapaw Blackhawk did let and lease to the defendant, The Iowa & Oklahoma Mining Company for mining purposes for the period of ten years from the 12th day of May, 1906, the following described lands, to-wit:

> The Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section Thirty-two, Township Twenty-nine, Range Twenty-four East of the Indian Meridian, Indian Territory,

be and the same is hereby declared to be null and void and of no effect in law, and is ordered canceled of record.

That the mining lease made, executed and delivered by the allottee, Charley Quapaw Blackhawk, to the defendant, The Iowa & Oklahoma Mining Company under date of May 12, 1906, and by it caused to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the City of Miami, and there to be recorded in book " G " on page 296 thereof, all as alleged in paragraph VIII of the Bill of Complaint, wherein and whereby the said Charley Quapaw Blackhawk did lease and let unto the defendant The Iowa & Oklahoma Mining Company for a period of ten years from the 12th of May, 1906, for minng purposes the following described land, to-wit:

> The Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section Thirty-two, Township Twenty-nine, Range Twenty-four East of the Indian Meridian, in Indian Territory,

be and the same is hereby declared to be null and void and of no legal effect, and is ordered canceled of record.

That the mining lease made, executed and delivered by Charley Quapaw Blackhawk under date of July 28, 1906, to the defendant, The Iowa & Oklahoma Mining Company, and by it caused to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and Ex-Officio Recorder in and for the First Recording District of Indian Territory, then located in the City of Miami, in said Territory, and there recorded in book " G " at page 337, all as alleged

in paragraph IX of the Bill of Complaint wherein and whereby the said Charley Quapaw Blackhawk did lease and let to the defendant The Iowa & Oklahoma Mining Company for mining purposes for the period of ten years from the 28th day of July, 1906, the following described land, to-wit:

> The Northwest Quarter and the Northwest Quarter of the Southwest Quarter of Section Thirty-one, Township Twenty-nine, Range Twenty-four East of the Indian Meridian, in Indian Territory,

be and the same is hereby declared null and void and of no effect in law, and is ordered canceled of record.

That the Complainant further have judgment against the said defendants herein, A. W. Abrams and The Iowa & Oklahoma Mining Company, for its costs and disbursements necessarily incurred herein and for statutory costs and docket fee as provided by law, to be taxed by the Clerk without notice to parties.

Done in open court in the City of Muskogee on this 14th day of February, 1911, being a day of the regular term of the United States Circuit Court in and for the Eastern District of Oklahoma, and an adjourned day of the Rule Day for the month of February, 1911.

RALPH E. CAMPBELL,
Judge.

(Endorsed:) Equity No. 1113. United States of America, Complainant, *vs.* A. W. Abrams, et al., Defendants. Decree pro confesso against defendants, A. W. Abrams and the Iowa & Oklahoma Mining Company. United States Circuit

Court Eastern Dist. Okla. Feb. 14, 1911. L. G. Disney, Clerk.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the District Court of the United States of America for the eastern district of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of Decree Pro Confesso against Defendants, A. W. Abrams and The Iowa and Oklahoma Mining Company, made and entered on the 14th day of February 1911, in the case of United States of America vs. A. W. Abrams, Equity No. 1113, as the same appears from the records in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Muskogee, in said District, this 11th day of December, 1914.

[SEAL] R. P. HARRISON,
Clerk.
By H. E. BOUDINOT,
Deputy Clerk.

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1. The patent to the Indian Charley Quapaw Blackhawk created in him a fee simple title with a general restriction against alienation for a defined period of years and with no further limitation in the nature of a reversion, remainder or entailment. It did not create in the allottee a life estate with remainder in his heirs, it was not a base or qualified fee or conditional estate fee. It is not an entailed estate or estate tail. The leasing Act of June 7, 1897, has the effect of modifying the alienation clause in the patent so far as the mineral title to said land is concerned to the effect that the mineral estate in said allotments shall not be alienable for a longer period than ten years at any one time 10

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3. The government was not authorized to prosecute in its name the case at bar against these appellees or against the defendants, Noble, Cooper or A. J. Thompson, even if the bill sufficiently alleges fraud inasmuch as none of the assignments and leases questioned exceed in duration a term of ten years from the date of their execution and are not violative of any restriction imposed by Congress; and for the reason that they involve a cause of action which, if it exists at all, is between Charley Quapaw Blackhawk, a citizen of the United States and of the State of Oklahoma, over whom the courts have jurisdiction and relative to whose affairs insofar as his mineral estate for a ten year term is concerned, the Government owes no duty or protection and has no supervisory governmental policy to maintain 41

A. The United States courts for the Indian Territory from January 1, 1898, to November 17, 1907 (the date of admission of the State of Oklahoma into the union), had full and complete jurisdiction over the person and estate of Charley Quapaw Blackhawk, and said Indian could have sued or been sued in such courts and a final judgment rendered therein would be binding on all parties to the action. So far as his mineral estate for a period or term of ten years was concerned he was the sole party in interest and

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the government could not have sued for and in his behalf 41

B. The state courts of Oklahoma succeeded to the jurisdiction of the United States courts of the Indian Territory on the admission of Oklahoma into the union, November 17, 1907, as to the extinguished rights of the government in and to the mining leases and assignments in question, by authority of the Enabling Act passed by Congress and providing for the admission of Indian Territory and Oklahoma Territory into the Union as the State of Oklahoma; and this action having been brought since the admission of Oklahoma would be, if at all, in the state courts instead of the Federal courts and the demurrers were therefore properly sustained. 44

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No. 127.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES,

VS.

CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON AND V. E. THOMPSON.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT.

We adopt the statement of appellant except as to the suggestions hereinafter made.

At the time of the assignment of royalties in question, the government was not maintaining an agency over the territory covering the Quapaw lands in the generally accepted use of that term. Allotments in severalty had

been made, the Indian Allottees had been expressly made subject to the jurisdiction, both civil and criminal, of the United States Court for the Northern District of the Indian Territory by express Act of Congress.

25 U. S. Stat. 783, Secs. 1 & 6.
26 U. S. Stat. 81.
28 U. S. Stat. 693, Sec. 9.
30 U. S. Statute 62.

It is true the government maintained in what was known as the Quapaw Agency, in which the land in question was located, an Indian School whose head was designated, by the title of School Superintendent in charge of the Quapaw Agency, and who was granted a limited power in supervising the division and the alienation of lands under rules of Department of the Interior in certain instances in which the law provided for an alienation of a part or the whole of certain allotments under the express supervision of the Secretary of the Interior.

> Annual reports, Department of the Interior, Commissioner of Indian Affairs, year 1904, pp. 181, 182; 1895 p. 150; 1893, p. 141. These specific reports are referred to as they deal in detail with the condition of the Quapaw tribe of Indians just prior to and subsequent to the passage of the general leasing act of June 7, 1897 (30 Stat. ch. 3 p. 72).

It will be noted that the land in question was *patented* to the allottee with a restriction on alienation and was not held by the so-called trust patents as were the allotments of the Wyandotes, Senecas, Ottawas, Eastern Shawnees and Modocs located in the same Agency.

See page 3 of appellant's brief.

Appellant refers to the record for copy of assignment of royalty attached in this proceeding. We desire to set out this assignment in full, which is as follows:

"ASSIGNMENT OF ROYALTIES.

Know all men by these presents, that I, Charles Quapaw Blackhawk of the Quapaw Reserve of the Indian Territory, for and in consideration of One Dollar to me paid by A. S. Thompson and V. E. Thompson, the receipt of which is hereby acknowledged and other valuable considerations named herein, in that, on the 8th day of September, 1905, I executed a contract with the said A. S. Thompson and V. E. Thompson whereby said parties were to prepare the necessary papers and prosecute a certain suit to judgment or compromise in the capacity of attorneys against Charles F. Noble and John M. Cooper, for the annulment of an assignment of royalties made by me under a certain mining lease on the N. W. ¼ and the N. W. ¼ of the S. W. ¼ of section 32, township 29, north, of range 24, east of the Indian Meridian, said contract providing in substance that the parties of the second part therein, same being the grantees herein in consideration of their services as therein provided for I did release, sell, and assign one-half of the proceeds of the judgment or compromise to be had in said suit, and whereas, said contract appears of record in the office of the Clerk of the United States Court at Miami, in Book "E" and page 64 & 65, and whereas said suit has been terminated and judgment entered therein decreeing that I am the owner of 2½ per centage of the entire product

of the minerals mined from said land and sold on or subsequent to the 31st day of January, 1906, and up to and including the 11th day of January, 1912, said judgment including all sales of mineral up to said date, January 11th, 1912, and all minerals on hand and on the dump at said date unsold and whereas said contract has been fully performed and in consideration of the above named services and pursuant to the terms of the said contract, I do hereby assign, sell, transfer and convey until said A. S. Thompson and V. E. Thompson, their heirs, executors, administrators and assigns an undivided one-half interest in and to the said judgment for royalties.

It is understood that it is the intention of this instrument to convey unto A. S. Thompson and V. E. Thompson one-half of the royalties recovered by me in said suit, which would be one and one quarter per cent of the whole product produced on said land under the terms of the judgment entered in said case.

In Testimony Whereof, I have hereunto set my hand this 21st day of February, 1906.

Charley Q. Blackhawk His X Mark.

Witness to mark:

George Redeagle, Interpreter.
A. W. Abrams.

County of Cherokee, State of Kansas, ss.

On this 21st day of February, 1906, before me Sam'l H. Smith, a notary public appeared Charles Quapaw Blackhawk personally known to me to be the

person who executed the above and foregoing instrument and he stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 21st day of February, 1906.

(Seal) Sam'l H. Smith,
Notary Public.

My commission expires 3-3-06.

County of Cherokee, State of Kansas.

On this the 21st day of February, 1906, before the undersigned, a notary public in and for the county of Cherokee and State of Kansas, personally appeared George Redeagle to me personally known as the person named as a subscribing witness and interpreter in the above and foregoing instrument, and who by me being first duly sworn says that Charles Quapaw Blackhawk signed said instrument in his presence and acknowledged that he executed the same for the consideration and purposes therein mentioned; that he has subscribed the same as a witness at the request of the said Charles Quapaw Blackhawk; that he, the said George Redeagle, did interpret said instrument from English into the Quapaw language to the said Charles Quapaw Blackhawk before same was signed; that he interpreted said acknowledgment to said Charles Quapaw Blackhawk before he acknowledged same and that he, said George Redeagle, has no interest directly or indirectly in the subject matter of the said foregoing instrument.

(Signed) George Redeagle.

Subscribed and sworn to before me this 21st day of February, 1906.

My commission expires 3-3-06.

(Seal) Sam'l H. Smith,
Notary Public."

CERTIFICATE OF RECORD.

United States of America, Indian Territory, Northern District, ss.

I, L. D. Einsel, deputy clerk of the United States Court and ex-officio recorder in and for the First Recording District of the Indian Territory, do hereby certify that the instrument hereto attached was filed for record in my office the 22nd day of February, A. D. 1906, at 10 A. M., and duly recorded in Book G, at pages 187-188.

Witness my hand and seal of said court at Miami in said Territory, this 26th day of February A. D. 1906.

(Signed) L. D. Einsel,
Deputy Clerk and ex-Officio Recorder.

File mark: North Dist. Ind. Ter. Filed Feb. 22, 1906-10 at Miami, I. T. L. D. Einsel Deputy Clerk Ex-Officio Recorder (Record pp. 67, 68, 69).

The excerpt from the original assignment of royalties of Chas. F. Noble as shown on page seven of appellant's brief contains on the fourth line of the quotation the expression, "The within *lease* shall hold good for the period of ten years." The use of the word *lease* in this connection is clearly a misprint and should be *assignment*.

We challenge the assumption of appellant on p. 8 of its brief in which the statement is made that "The utter incompetence of the Indian to protect himself is revealed by paragraph X of the bill (R. 11)." It is true that the bill alleges that the Indian "was and now is unable to read, or write or understand intelligently the English language;" that it is plead generally that he is incapacitated for the transaction of business but on the very same page of the record (R. 11) it is conceded by the government that during this period of time he executed a mining lease the *validity of which is conceded* (Appellant's Brief, p. 9), and it will be noted that nowhere is it alleged that the Indian did not understand and comprehend his assignment to these appellees. It will be noted in this connection that this assignment was interpreted to the Indian and that he acknowledged it and the interpreter makes an affidavit as to his truthful interpretation of it. This part of the instrument attacked is nowhere questioned in the pleadings.

We desire to call the court's attention also to the fact that in no part of the bill is there any allegation of fraud against these appellees. In the excerpt from the bill shown on p. 10 of appellant's brief (R. 11 and 12), the allegation of fraud is made in the following words: "The said defendants and each of them respectively well knowing the value of the mineral deposits in said lands, and the ignorance, incompetency and incapacity of the said Charley Quapaw Blackhawk, and his entire inability to comprehend values, fraudulently took advan-

tage thereof, and respectively procured him to sign those certain writings hereinbefore set forth in paragraphs V, VI, VII, VIII, and IX." In none of these paragraphs is described the appellees' assignment, but the allegation relative to this assignment may be found in paragraph XII of the bill (R. p. 13) in the following words:

> "Your orator further shows that on the 21st day of February, 1906, the said Charley Quapaw Blackhawk made, executed and delivered unto A. S. Thompson and V. E. Thompson, two of the defendants in this action, a certain instrument designated as an assignment contract, wherein and whereby the said Charley Quapaw Blackhawk did, in violation of and contrary to the express provisions of the said Act of Congress approved March 2, 1895 (28 Statutes at Large, page 907), and the said Act of Congress approved June 7, 1897 (30 Statutes at Large, page 72), among other things, sell, assign and transfer unto the said A. S. Thompson and V. E. Thompson, for a period from February 21st, 1906, up to and including January 11, 1912, one and one-fourth (1¼%) per cent of the whole product produced on said land, described as follows, to-wit:
>
> The northwest quarter and the northwest quarter of section thirty-two 32, township twenty-nine (29), north range twenty-four (24), east of the Indian Meridian, Indian Territory, all as more fully set forth in said lease, a copy of which is hereto attached, marked Exhibit "B," and made a part of this bill of complaint; that the said A. S. Thompson and V. E. Thompson, in all things accepted the said assignment contract and therefore, to-wit, on the 26 day of February, 1905, caused the said contract for the assignment of royalties

to be filed for record in the office of L. D. Einsel, Deputy Clerk of the United States Court and ex-Officio Recorder in and for the First Recording District of Indian Territory then located in the City of Miami in said Territory, and there to be recorded in Book 'G' at page 187 thereof; a copy of which said assignment is hereunto attached, marked Exhibit 'J' and made a part of this bill of complaint."

Appellees direct attention to the manner in which they secured their assignment in question. This assignment was secured in consideration of the services of appellees as attorneys rendered in accordance with a previous contingent fee contract in which they were to receive a fee of half the judgment or royalties recovered in a suit instituted in the United States Court for the Northern District of the Indian Territory in an action wherein Charley Quapaw Blackhawk was suing Cooper and Noble for a recovery of royalties previously assigned by Blackhawk to them. In this case a judgment was entered decreeing Blackhawk was entitled to recover from Noble and Cooper one-half of the royalties previously assigned by Blackhawk to them. This judgment was never appealed from by either party. The assignment in question is virtually an assignment of a one-half interest in this judgment, at the same time being broad enough in its terms, to cover an assignment of a 1¼ per cent royalty during the period of time covered by the first lease, which appellant concedes to be valid.

ARGUMENT.

I.

The patent to the Indian Charley Quapaw Blackhawk created in him a fee simple title with a general restriction against alienation for a defined period of years and with no further limitation in the nature of a reversion, remainder or entailment. It did not create in the allottee a life estate with remainder in his heirs, it was not a base or qualified fee or conditional fee. It is not an entailed estate or estate tail. The leasing act of June 7, 1897, has the effect of modifying the alienation clause in the patent so far as the mineral title to said land is concerned to the effect that the mineral estate in said allotments shall not be alienable for a longer period than ten years at any one time.

A. *There can be no room for doubt as to the nature of the title conveyed. It was a complete fee simple title with a restriction against alienation.*

While we recognize the principle that Indian estates cannot with strict accuracy be compared with the usual common law classification of estates in the freehold still in the absence of a clearly defined intent to the contrary it is both practicable and necessary that such a comparison be made.

(1) This estate cannot be classified as a life estate.

> "An estate for life is a freehold interest in land, *the duration of which cannot extend* beyond the life or lives of some particular person or persons" (16 Cyc. 614).

A restriction for a period of 25 years may extend beyond a life or lives in being or it may not and the estate may become absolute in the lifetime of the immediate grantee.

(2) This estate cannot be considered as a base or qualified fee.

> "A base or qualified fee is such a one as hath a qualified subjoined thereto and which must be determined whenever the qualification annexed to it is at an end" (16 Cyc. 602).

This estate is not determined by the performance or non-performance of any qualification annexed thereto. It is not dependable upon the occurrence of any collateral circumstances.

(3) This estate cannot be classified or compared with a conditional fee.

> "A conditional fee is one which restrains the fee to some particular heirs exclusive of others" (16 Cyc. 604).

The only logical comparison or classification of the estate granted to the Quapaws is that it is a fee simple title with the power of alienation or absolute ownership suspended for a period of years.

(4) We submit that the history of the allotment of these Quapaw lands shows the intention of Congress to grant a fee simple title.

It would be well and advisable in our judgment to give a short history of the allotment of the lands to the Quapaw Indians, so that we may understand the condition, ability and far-sightedness of the members thereof and the recognition by the Government. The lands of the Quapaw Indians were duly allotted and set apart in severalty by the tribal council and was ratified by an Act of Congress dated and approved March 2, 1895.

The Quapaw National Council of dated March 23, 1893, approved an Act providing for the allotment in severalty of the tribal lands and it may be advisable to set forth same at length herein excepting sixty odd names signed thereto. It is as follows:

> "An act to provide for the allotment of land, in severalty to the Quapaw Indians, in the Indian Territory, and for other purposes therein named.
>
> Whereas the Quapaw Nation of Indians has been recognized and respected by the government of the United States since the 24th day of August, A. D. 1817, as a body or Nation, competent to contract, make treaties and hold lands by title in fee simple; and whereas, by the treaty with the United States concluded May 13th, 1833, approved or proclaimed April 12th, 1834, our said nation purchased for a valuable consideration a large tract of land in the Indian Territory, 56,685 acres of which we still hold by title in fee simple, as the common property of the Quapaw Nation of Indians (See 7 Stats. page 425, Article 2), and
>
> Whereas, we as a Nation of Indians have long since arrived at that stage of civilization where we desire, and are anxious for our lands to be allotted in severalty to the members of our tribe, who are

members of our Tribe, or Nation, by birth, or whose adoption has been approved by the Hon. Secretary of the Interior, and

Whereas, we have agreed in open council, many times during the last four years, to accept our allotments, on the basis of (200) two hundred acres, to each member of our said nation; and

Whereas, there are at present about (230) two hundred and thirty names entitled to enrollment on our said Quapaw Rolls, which on the above basis would require about (46,000), forty-six thousand acres, leaving a surplus of over (10,000) ten thousand acres, and

Whereas, at this date fully (4-5), four-fifths of our people have already made their selections for themselves and minor children, and many of them have valuable improvements thereon, and all on the above plan or basis, and

Whereas, all of the neighboring tribes in our Quapaw Agency, have had their lands allotted, the Miamis and Confederated Bands of Peorias, in tracts of two hundred acres each, and

Whereas, our Quapaw Nation has sent several duly authorized delegates to represent our Nation, before the various Departments, and the Congress of the United States, at Washington, D. C., and in our name and stead to petition, ask, pray and demand at the hands of the Congress of the United States, the introduction and passage of a special allotment bill for our relief or benefit, on the above or foregoing named basis, viz. (200) two hundred acres each, and

Whereas, the Congress of the United States has up to this time failed to pass any "special allotment bill" for our relief.

Therefore, after mature deliberation in our National Council and carefully examining our

treaty with the United States, and the title to our reservation, and consulting with eminent constitutional jurists, on this subject, among them we could name several U. S. Senators and Congressmen. We have formulated the following 'Act of Council,' and will proceed to allot our lands in severalty to the members of our Quapaw Nation, or Tribe of Indians, giving certificate of allotment, or patents therefor, all of which we will do at our own expense, and respectfully ask and petition the Hon. Secretary of the Interior, and the Congress of the United States to ratify and approve the same, viz:

AN ACT

To provide for the allotment of lands in severalty to the Quapaw Indians in the Indian Territory, and for other purposes therein named.

Be it enacted by the Quapaw Nation in open council assembled, that our first Chief, John Medicine, is hereby authorized and directed immediately after the passage of this act, by and with the consent and approval of our *Second Chief*, and our National Council, to appoint (3), three members of our Quapaw Nation of Indians an allotment committee, and shall duly commission them in accordance with the provisions of this act.

Sec. 2. That said allotment committee shall proceed, or take steps at once after their appointment, to allot to each and every member of our Quapaw Nation of Indians, now located in the northeastern part of the Indian Territory, upon lists furnished them by our Chiefs and Council, in and for our said Quapaw Nation of Indians, and duly approved by the Hon. Secretary of the Interior, an allotment of lands of (200) two hundred acres (as near as may be, according to the present government survey), out of our common reserve. To each person entitled thereto, by reason of their

being members of our nation by birth, or whose adoption has been approved by the Hon. Secretary of the Interior.

All allotments to be selected by the allottees, heads of families selecting for their minor children, and the Chief of our Nation for each orphan child; all differences arising between members of our Nation in making allotments shall be settled by our Chiefs and Council, subject to appeal to the Hon. Secretary of the Interior. Provided, that before the allotments herein provided for shall be made, there shall be set apart a tract, or tracts of land not exceeding (400) four hundred acres, upon which the present Government School Buildings now stand, for the use and benefit of the said Government School, so long as it shall, or may be used for school purposes by the United States.

Sec. 3. That the allottees, members of our Quapaw Nation of Indians and the lands so allotted, shall be subject to such laws, rules and regulations, as the Hon. Secretary of the Interior and the Congress of the United States may prescribe, in approving this act, of our Quapaw National Council, provided, that in no case or event shall the number of acres so allotted to members of our tribe or nation be decreased or diminished.

Sec. 4. That the allotment committee, shall have power under this act, and are hereby authorized to contract with and for a civil engineer, or surveyor, and chain men, and others to assist them in retracing the lines of the Government survey when in their judgments it is necessary.

Also to contract for and have such printing and typewriting done as they find necessary.

Also to contract for and purchase such books, or other blank books and stationery as they find necessary.

Also that said allotment committee shall each be paid for his services at the rate of ($2.50) two dollars and fifty cents per day.

All bills or vouchers of whatever kind, shall be drawn on the Quapaw Nation, or Tribe of Indians, their Chief and Council acting for them; all of said bills or vouchers shall be certified to by the said allotment committee, before action will be taken on them by the auditing committee; all bills of whatsoever kind shall be audited or examined carefully by a special auditing committee appointed by the council whose duty it shall be to either approve or reject any and all bills or vouchers, or any part thereof, subject also to approval by our United States Indian Agent at the Quapaw Agency, Indian Territory.

Sec. 5. This act shall be in full force and effect from and after its passage.

In witness whereof, we the undersigned Chiefs, Councilors, and adult members of the Quapaw Tribe or Nation of Indians of the Indian Territory, do hereby subscribe our name this 23rd day of March, A. D. 1893, on Quapaw Reserve, Indian Territory.

(Signed) 1st Chief, John Medicine, X his mark
2nd Chief, Charlie Quapaw, X his mark
1st Councilor, Alphonsus Vallier,
X his mark
2nd Councilor, Buffalo Calf,
X his mark
3rd Council, Peter Clabber, X his mark

Witness to 60 names first signed.
T. F. Richardville,
T. J. Cardin,
C. E. Geboe."

Note: Names of signatures of Chiefs and Councilors followed by signatures of sixty adult members.

This act and its preamble are deemed by us to be instructive at least as tending to show the degree of intelligence of the Quapaw Indians almost twenty years ago and to show with what thoroughness and care they did things even then.

Before passing, we wish to call special attention to the fact that the Indian allottee whose lands in this suit are sought to be cleared of purported invalid leases, sometimes named Charley Quapaw, Charles Blackhawk Quapaw and Charley Quapaw Blackhawk, is one and the same Indian who as Second Chief of his tribe helped enact the above comprehensive Act. From a careful reading of the Act, and understanding that this perhaps is the first and only instance where a tribe of Indians allotted their own lands, and with such manifest fairness and completeness that Congress did nothing more than adopt and ratify the Acts of said tribes and caused patents to be issued therefor to the individual Indian, one would hardly consider Charley Quapaw to be the "old and infirm, unable to read or understand intelligently the English language; that he is wholly incapacitated for the transaction of business" as counsel for appellant would have the court believe. It will be noted that he was Second Chief of his tribe and no doubt was selected by reason of his ability to manage the business affairs of the tribe.

We observe that it was the earnest desire of these Indians to have their individual allotments and homes and to live and own their property like their white neighbors.

In our judgment, Congress in recognition of the thoroughness and ability of these Indians as shown by their acts, determined to abandon the earlier policy of the government and issue fee simple patents to them with only a restriction against alienation for a limited number of years.

Jones v. *Meehan*, 175 U. S. page 1.

In the above case at page 53, this court says:

> "The question in every case is whether the terms of the treaty are such as to manifest the intention of the parties to make a present grant to the persons named."

Further on page 58, this court says:

> "The clear result of this series of decisions is that when the United States in a treaty with an Indian Tribe, and as a part of the consideration for the cession by the tribe of a tract of country to the United States, makes a reservation to a Chief or other member of the tribe of a specified number of sections of land, whether already identified, or to be surveyed and located in the future, the treaty itself converts the reserved section into individual property; the reservation unless accompanied by words limiting its effect, is equivalent to a present grant of a complete fee simple; and that title is alienable by the grantee at his pleasure, unless the United States by a provision of the treaty, or of an Act of Congress have expressly or impliedly prohibited or restricted its alienation."

This court in *Ann Francis* v. *Peter J. Francis et als.*, 203 U. S. 233, and at page 240, quoting the lower court with approval, says:

> "It is very clear that, if a fee simple estate was intended to be granted, the parties to the treaty were unfortunate in the choice of terms by which to give effect to that intention; and yet it is difficult to conceive that any other estate was in contemplation of the parties at the time of its existence. Will, then, the third article warrant such a construction? It will be observed that the reservation is to the use of Makitchenoqua and *her heirs.* No limitation as to time of holding or restriction upon the right of alienation, is contained in the grant. *The use of the word 'heirs' clearly implies that such an estate was granted as would, upon her death, descend to her legal representatives. Here, then, are all the essentials of a fee simple estate.*" (Last italics ours.)

In re Heff, 197 U. S. 409, and at page 509, the court says:

> "And equally clear is it that Congress may enforce and protect any condition which it attaches to any of its grants. This it may do by appropriate proceedings in either a National or a State Court. But the fact that property is held subject to a condition against alienation does not affect the civil or political status of the holder of the title. Many a tract of land is conveyed with conditions subsequent. A minor may not alienate his lands; and the proper tribunal may, at the instance of the rightful party, enforce all restraints upon alienation."

B. *The Act of June 7, 1897 releases the restrictions on the mineral estate for ten years.*

We concur with appellants that the purpose of the leasing act was to bring personal training and pecuniary or other material betterment to the Indian, but we respectfully contend that the purpose is not thwarted by

the construction adopted by the courts below. A proper construction of an act never defeats its purpose. In event the act does not accomplish its purpose it is not the error of the court, but the inherent defect of the act. If counsel were to argue that the act in question was impolitic or unsafe another avenue of discussion would be opened which it would be purposeless to discuss here. The fact remains that Congress has given the absolute power to lease without any supervision or restriction during a period of ten years save and except the one significant proviso, "that whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee cannot improve or manage his allotment properly and with benefit to himself, the same may be leased in the discretion of the Secretary upon such terms and conditions as shall be prescribed by him" (Appellant's brief p. 24). This proviso is a clear index to the purpose and intent of Congress. It becomes clear that Congress expressed the purpose to declare all allottees *sui juris* for a period of ten years in advance relative to the mineral estate in their land, except such as the Secretary of the Interior should at any time expressly exempt from that class. It is not contended that the Secretary of the Interior ever exempted Charley Quapaw Blackhawk from that class, but on the other hand the Government has expressly recognized that he is competent and should not be exempted from that class in their recognition of his original lease.

The statement is made by counsel for the Government that the court should constantly bear in mind that

the leasing act "was intended to open the door just wide enough to reach it (the purpose aimed at)." How far would counsel suggest the door be opened by judicial discretion? Just wide enough to allow the Indian to execute the formal lease in the first instance and with no further power or control over it. Could he not collect or use the income? Would the door be closed against his modifying the terms of his original lease should circumstances occurring during the development of the ground demand or make it to his benefit to do so? Could he not agree to accept his royalty in a share of the ore produced at any given turn instead of accepting the per centum of the gross sum of money received for its sale if he should deem it to be to his advantage to do so for the purpose of holding same for a raise in price? Could he not assign his royalty for the next turn in for spot cash on the market as it then stood if he was of the opinion that he would profit thereby? The very nature of the mining industry itself makes such a position absurd and in itself would absolutely rob the Indian of any initiative, any personal training except perhaps the training of signing his name to a lease. Congress recognized the fact that the mining for lead and zinc ores was a very uncertain and expensive venture. Lead and zinc ores are not found in solid bodies, cannot be blocked out like coal, is not found in pools like oil, but is found in veins or fissures, and in bodies of constantly varying thickness and depth. It must be prospected for by expensive drilling and exploration work, mined only after

the erection of expensive mills, concentrating plants and underground workings; the future production is always a matter of speculation; a fine prospect today has vanished tomorrow, perhaps never to be found again, or only after long and expensive search. No experienced owner of mining ground would consider his work and responsibility at an end when he had signed a mining lease. He would recognize the fact that the future might develop a condition under which his operator or lessee could not work the mine with profit on the royalty reserved and in order to prevent the loss incurred in the expenditure of timbering and drifting and underground development he might be required to reduce the royalty reserved for a time, or if the development work had been long continued without success, until near the termination of his lease, he might deem it to his advantage to grant a sufficient extension of time in his lessee to justify the expenditure of more money in thoroughly prospecting the ground rather than to have the lessee abandon it and thereby by the notoriety caused by such abandonment lessen his chances of securing capital to further prospect the land, or he may prefer a sum of money for his royalties rather than to chance the future on the theory, which is oftentimes a wise one in the mining business, "that a bird in the hand is worth two in the bush." In case he is defrauded he like any other party defrauded has his remedy.

We, therefore, submit that it was the evident purpose of Congress to leave the Indian unhampered by troublesome restrictions and left free to act at any time

for a period not to exceed ten years in advance in the management of the mineral estate in his land and in the disposal of the proceeds therefrom.

Such a conclusion is consistent with the general purpose of this legislation and with the nature of the title granted the Indian and substitutes certainty for uncertainty in this class of cases and encourages the development of the Indian land at a time when the owners need the proceeds therefrom more than they or their heirs in further stages of their advancement will ever need it. Clearly the Indian is given full dominion over his mineral estate subject only to the modification that he do not encumber it for a longer term than ten years at any one time. There can be no reasonable doubt as to his power.

If then, these premises are correct, it naturally follows that the lower courts were correct in their holding that the Government had no power to sue in actions covering only transactions within the ten year period and not in effect interfering with the ultimate restrictions for a period exceeding that time; that no cause of action was plead; and that the assignment of royalties was valid; and that the so-called lap leases insofar as they did not encumber the Indian allotment for a period to exceed ten years from the making thereof, were not a violation of the restrictions imposed by Congress.

Commenting on the Act of Congress known as "The Creek Supplemental Agreement" Act of June 30th, 1902, C. 1323, 32 Stat. 504, Sec. 17, providing that "Creek citizens may rent their allotments for strictly non-mineral

purposes for a period not to exceed five years for agricultural purposes but without stipulation to renew the same," Justice Dunn of the Supreme Court of Oklahoma uses the following language:

> "In our judgment the spirit and intention of the act goes to the extent of precluding the allottee from leasing his land in any manner, so that on the expiration of five years *from any date, after the beginning of the term of a lease granted, he cannot have it free, clear and unincumbered*" (italics ours).
>
> *Witham* v. *Lehmer*, 22 Okla. 627, 632, 98 Pac. 351 (cited in Appellant's brief p. 29).

To same effect see opinion of J. Hayes in *Williams et al.* v. *Williams*, 22 Okla. 672, 98 Pac. 909.

Scraper v. *Boggs et al.*, 27 Okla. 715 (J. Kane), 117 Pac. 193.
Scherer v. *Hulquist*, 39 Okla. 434.
Moore v. *Girten*, 5 Ind. Ter. 384.
United States v. *Abrams*, 194 Fed. 82.

We contend the lower court was right in holding that the United States could not bring suit in its name to cancel the instruments, leases and assignments of royalty, held by the appellees. Our position can be made no plainer than by adopting the statements of Judge Campbell in his opinion in this case commencing at page 33 of the record herein, which is as follows:

> "The Act of Congress granting authority to lease for mineral purposes, contained one limitation, to-wit: That the term should not exceed ten years. A lease for a longer term would be invalid, and hence the lease of July 28th, 1906, to the Iowa

and Oklahoma Mining Company, for twenty years, is invalid, and should be canceled. The law makes no provision as to the amount of consideration that shall be paid, or any other terms, except as to duration. No supervision of the contract is provided for by the Secretary of the Interior, or any agent of the government. It appears that Congress while still imposing the general condition against alienation for twenty-five years, has seen fit to modify that to the extent of vesting in the allottees the right, on his own responsibility regarding his land. At the expiration of the twenty-five years term, unless further extended, he would have absolute control. The right in the meantime to make the limited lease-contracts provided for, bringing him into contact with others in a business way, it was no doubt conceived, would enable him to reap some benefit from his allotment in the meantime, other than he might gain by his own labor thereon, and accustom him to business dealings, preparatory for the ultimate absolute control of his property. The allottee in this case is a citizen of the United States and of the State of Oklahoma (General Allotment Act, 24 Stat. 388, as amended, 31 Stat. 1447; Oklahoma Enabling Act, 34 Stat. 267). If in the making of any mineral lease contract, running for a lawful term, he is overreached in some fraudulent manner, relating to the consideration or other feature of the lease, such as would entitle any citizen to maintain an action in court for legal redress, he has such right of action, which he may prosecute in the proper court in his own name. It is held in *United States* v. *Allen, supra*, that a deed or lease procured in violation of the Acts of Congress imposing restrictions upon alienation, as, for instance, an attempted sale of inalienable land or an attempted lease for a longer period than the law provides, is such violation of the governmental policy involved in the making of such allotments

as entitle the government, in its own name, to sue for the cancellation of such instruments. In such case there is a clear violation of conditions imposed by Congress as to alienability. Where, however, as in this case, Congress has extended the right to lease with no condition except that for a particular purpose the term shall not exceed a certain number of years, if the lease is expressly for the purpose contemplated in the Act, and does not exceed the term allowed, I can conceive in the Act permitting leasing no governmental policy, either express or implied, which would enable the government to maintain an action in its own name to cancel such lease. In making the allottee a citizen and in vesting him with power to lease for a particular purpose and term for such consideration as might be agreed upon between him and his lessee, I think it was the intention of Congress that in all respects, save as to the purposes, which must be either grazing, farming or mineral, and the term, which must not exceed a prescribed period, the allottee is clothed with just as full and complete power to lease his land as his white brother, and if, though the lease be for a lawful term and purpose, he is imposed upon by the lessee in regard to some other feature in such way as would give a white citizen a right of action for legal redress, then he and not the government must bring the suit. The mere fact, therefore, that by fraud the lessee may have secured a lease for a manifestly inadequate consideration, would not entitle the government to sue if it appears to be made for a lawful purpose and term.

In my opinion, Congress intended that within the limitations as to purposes and term, the allottee should exercise the same independent right to lease his property and enjoy the proceeds thereof that the law gives to other citizens. And in lieu of the governmental supervision thus partially withdrawn,

gave him the status of a citizen and access to a forum where, like any other citizen, he could redress his wrongs. I believe that it was the intention of Congress that within the limitations mentioned this right of disposal of his property was by leasing granted as a means of affording him that experience in business affairs necessary to enable him to eventually handle his property without any restrictions whatever. This is consistent with the purpose manifested by Indian legislation of recent years to hasten, as much as may be consistent with his welfare, the time when the Indian in this state shall have the same rights of disposition of his property as his white neighbor exercises over his. Hence the absolute supervision so long exercised by Congress over the Indians, keeping them a people apart from other races, dependent and incapable, is gradually being withdrawn, and while it is the duty of the courts to recognize the existence of such supervision wherever it does not appear to have been withdrawn, it is equally their duty to recognize in the Indian that measure of independence and equality under the law with his white brother which the Acts of Congress, from time to time, indicate that body intended the Indian should have, bearing in mind, of course, that wherever an Act under consideration is fairly capable of more than one construction, that construction should be given most favorable to the Indian" (R. pp. 33-35).

Located within the Quapaw Agency are eight small tribes of Indians, small remnants of tribes, who have for years prior to their allotments and prior to their coming to the Indian Country been associated with the white men and raised and educated along with his white brother. And it is a noteworthy fact that of these eight tribes the Quapaw received a patent with less restric-

tions and conditions imposed therein than any of the others. The only restriction is against alienation, while the patents to the Miamis and Peorias and the other tribes located in said Agency provide:

> "That the said lands shall not be alienated nor subject to levy, sale, taxation, or forfeiture for a period of twenty-five years from the date hereof, and any contract or agreement to sell or convey said land before the expiration of said period shall be absolutely null and void."

It is clear to us that Congress, speaking for the government, when it patented the Quapaw lands, recognizing the capacity of the individual Indian, and further affirming and recognizing the new policy of the government toward the Indians, so often referred to by this court, turned the Indian loose with his allotment with a restriction thereon only against his alienating it for twenty-five years. Later as shown by appellant's brief, Congress permitted him to alienate or lease it for a period of five years for mining purposes (29 Stat. L. 321), and later in the year of 1897 gave him further permission to alienate or lease his land for mining purposes for ten years (30 Stat. L. 72); evidencing an intention on the part of the government to lift the restriction gradually until the full restrictive period had expired and in the meantime allowing the Indian, so long as he kept within the leasing period of ten years, to deal with his white brother, make his contracts or leases, impose such terms and conditions as he could obtain, in fact, drive as good a bargain as he was capable of doing

with those with whom he would deal. Congress has given him no rule to guide him in the matter of leasing, no specified royalty, no provision for diligent work, no provision for protection against waste and we know of no regulations issued by the United States, through its Indian Department, relative to leasing lands for minerals in the Quapaw Agency, even for those who the Secretary of the Interior might declare incompetent under the provision cited by appellant. What was the intent of Congress with respect to the Quapaw Indians? There can be but one logical conclusion, and that is expressed in the case of *In re Heff*, 197 U. S. page 490, wherein the court at page 499 says:

> "Of late years a new policy has found expression in the legislation of Congress, a policy which looks to the breaking up of tribal relations, the establishing of separate Indians in individual homes, free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardianship and ward. It may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*, and it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended and the courts may wisely insist that the purpose of Congress be made clear

by its legislation; but when that purpose is made clear the question is at an end."

This is also recognized in

United States v. *Celestine*, 215 U. S. 278.

As a further evidence of the intention to adopt the new policy towards these Indians, abandoning the guardianship over them for a limited period, we quote from an Act of Congress approved June 7, 1897, being the same date upon which the Act authorizing allottees of Indian lands in the Quapaw Agency to lease their allotments for mining purposes for ten years, as follows:

> "That on and after January 1, 1898, the United States Court in said Territory (Indian Territory), shall have *original and exclusive* jurisdiction and authority to try and determine all causes in law and equity thereafter instituted, and all criminal causes for the punishment of any offense committed after January 1st, 1898, by any person in said Territory, and the United States Commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all *persons* and *property* in said Territory; and the laws of the United States and the State of Arkansas, in force in the Territory, shall apply to *all persons therein, irrespective of race.*"
>
> (30 Stat. L. 83 and 84.)

It is contended by counsel for appellant that the various leases were fraudulently secured from the allottee and seem to rest on the assertion that a second or subsequently acquired lease is presumptively fraudulent because more royalty is not paid than in the former.

This statement is coupled with a charge in the bill that the lessees took advantage of the allottee "well knowing the ignorance, incompetency, and incapacity of said Charley Quapaw Blackhawk and his entire inability to comprehend values." We do not agree with appellant's counsel that such would constitute fraud, and we think the court would be justified at least in searching the bill for statements of appellant refuting any such charge. Surely an Indian, who as Second Chief of his tribe had assisted in allotting the tribal lands, assumed the responsibilities and burdens of this project placed on him by sixty or more of the leading men of his tribe, given authority to parcel out this vast tract of land into individual allotments, should not be classed in the same pleading as a man "ignorant, incompetent and incapacitated and entirely without ability to comprehend values."

We concede that the United States may bring suit to cancel a lease or contract executed in violation of the restriction period in the patent. We do, however, assert that it cannot bring suit to cancel a lease or contract made within and not violative of said leasing period even though secured by fraudulent practices, for the reason that in our opinion the trial court was right in saying that within the ten year period the allottee was emancipated and was allowed to shift for himself so that at the end of the restrictive period he would have become in a sense experienced in handling and leasing his land.

United States v. *Brooks, et als.*, 10 How. (U S.) 442, 13 L. Ed. 489.

While the above named case is not altogether in point, yet the court says:

> "We think that the treaty gave to the Grappes a fee simple title to all the rights which the Caddos had in these lands, as fully as any patent from the Government could make one. The reservation to the Grappes, 'their heirs and assigns forever,' creates as absolute a fee as any subsequent Act upon the part of the United States could make. Nothing further was contemplated by the treaty to perfect the title. We have nothing to do in our consideration of the case, with the conjectural intimations, which were made in the argument of it, concerning the influences which were used to secure the reservation, or the designs of the Commissioner in having it done. The record shows that he becomes a purchaser for a valuable consideration. *Whether for an adequate one is not for us to say.*"

According to the position of counsel for appellant, as we view it, after an Indian once exercises his right to lease then no matter what subsequently transpires, prior to the termination of the term for which the lease is granted, such Indian cannot cancel and surrender the same; neither could the lessor avail himself of a provision for the forfeiture of which lease, for if he could do that, then, there would be nothing to prevent the parties colluding together for the purpose of creating grounds for forfeiture and having a suit instituted to affect such purpose and afterwards entering into a new contract; in other words if followed to its logical conclusion the argument of counsel will be found to result in this, that only once during the prescribed term can the

allottee lease his lands, for unless he can voluntarily enter into a contract for the cancellation and surrender of such lease it follows that he could not forfeit the same in order to acquire the right to make a new lease, for that would be doing indirectly what counsel argues that he cannot do directly, and it seems to us that a careful analysis of the position assumed by counsel is all that is necessary to prove the unsoundness of such position.

The fact that some few of the Indian allottees may act in an improvident manner in the management and control of their lands can certainly be no reason for placing such a construction upon the law under consideration as appellant seeks to have placed upon it; many are the instances in which a wayward and spendthrift son of a successful father manages his inheritance in an improvident manner and completely exhausts it in riotous living, yet that is no reason why some other parent should completely divert his estate from his offspring; in the case of the Indian allottee there is one thing certain that, in the language of Mr. Justice Philips in the case of *Buffalo* v. *Goodrum*, 162 Fed. 817:

> "Congress ceded the lands with a firm cable attached to hold them to the exclusive use and possession of the Indian without qualification, restricting the power to divest themselves of the use and title until after the fixed period," and while Congress has released its 'firm cable' at one end by allowing the Indians to lease for certain prescribed purposes and periods of time, yet the other end of the cable is as firmly attached as ever and no dif-

ference how improvident, careless and shiftless the Indian allottee may be in the leasing of his lands, the same will by the mere lapse of time return to him to be finally disposed of after the expiration of the period of restriction against alienation as improvidently as in leasing the same perhaps, unless he shall have profited by the probationary powers which Congress has so wisely granted to him by the terms of the law under consideration.

We are willing to concede that it was in pursuance of a governmentl project, and think that the lower court had the matter under consideration from that viewpoint at the time of rendering the opinion in this case; it is the plan of Congress as was said by the lower court in rendering the written opinion in the case of *United States* v. *Abrams et al.*, 194 Fed. 82.

"That within the limitations mentioned, this right of disposal of his property was by leasing granted as a means of affording him that experience in business affairs necessary to enable him to eventually handle his property without any restrictions whatever. This is consistent with the purpose manifested by Indian legislation of recent years to hasten, as much as may be, consistent with his welfare, the time when the Indian in this state shall have the same rights of disposition of his property as his white neighbor exercises over his."

So we see from the language of the court in that case that it was construing the Act in the light of the "new policy" recently manifested by Indian legislation and which is mentioned by the Supreme Court in the case of *U. S.* v. *Celestine*, 215 U. S. 278, and the case of *In re Heff*, therein quoted from.

II.

The Indian is given full power to assign rents and royalties arising from valid mining leases or during the unrestricted period of ten years.

It appears clear from all adjudicated cases and from the very spirit of the law and its logical result that the Indian at all times is given full and complete *jus disponendi* over the mining estate in his land for a period of ten years. He is given full power to lease without restriction within said ten year period. No express restrictions to the assignment of the royalty reserved in these leases appear. The intent of Congress to leave the Indian unhampered during this period is clear, but even if the question should be in doubt we submit that the principle laid down by the Supreme Court of Oklahoma to the effect that, *"it would be manifestly inappropriate to imply restrictions where the intent itself is not clear,"* is the correct rule of statutory construction to apply.

Stout v. *Simpson*, 34 Okla. 138.
Mullen et al. v. *U. S.*, 224 U. S. 453; 32 Sup. Ct. 497, 56.
Goat et al. v. *United States*, 224 U. S. 458; 32 Sup. Ct. 544.
Godfrey v. *Iowa Land and Trust Co.*, 21 Okla. 293; 95 Pac. 792.
Hancock v. *Mutual Trust Co.*, 24 Okla. 391; 103 Pac. 566.

It is conceded by appellant (Brief, p. 31), that if the allottee has complete *jus disponendi* he might assign royalties reserved in a mining lease, but the argument

is advanced that the allottee by assigning the royalty reserved would be incumbering the reversion. This argument is faulty in two particulars, first, because under the title granted to the Quapaw Indian there is no estate in reversion, and the Indian is not forbidden to convey the reversion but is only forbidden to convey during a certain prescribed period; and second, if the estate in the Indian could be classified as a life estate in the allottee with remainder over to his heirs, the remainderman would not be entitled to any rents accrued during the life of the life tenant, and up to the time of the commencement of this action and at the present time the so-called life tenant is still living, and at this time the assignment in question has expired by virtue of its own limitation.

The argument is also advanced, "that the original restriction upon the alienation of the land adhered to every part of the estate which remained in the Indian after the lease was made." Rent or royalty could not have existed under the original restriction. The authority to grant the lease and the granting of the lease thereunder brings into existence the rent or royalty which was not contemplated under the original restriction, and hence it could not be said the original restriction was intended to cover these rents or royalties.

Appellant compares the lifting of the restriction for a period of ten years to permit leasing as a *power* granted the Indian. If the Indian is granted the fee at the time of the delivery of his patent, we submit that there

would be in existence at the time of the passage of the subsequent act of Congress authorizing the leasing, no donor of such a power.

The authorities cited by appellant on pages 30 and 31 of its brief are not in point for the reason that the principles enunciated in those authorities and cases only apply to entailed estates or life estates.

Appellant on page 31 of its brief states that, "the learned courts below failed to distinguish the rent (and royalty representing it) from the cash which comes to hand (and which the Indian may spend as he pleases) when rent has accrued and is paid." We fail to find any distinction from the adjudicated cases between the unpaid rent and the paid rent during the lifetime of the lessor in the lease, or any distinction between rent payable in cash in advance or payable in cash at some future time to be definitely determined upon certain defined conditions in the lease.

> "Rent is a species of incorporeal hereditament, it is defined as a certain profit issuing yearly out of lands and tenements corporeal. It issues out of the thing granted, and is no part of the thing or land itself. It is collateral to a corporeal hereditament, and is a thing unconnected with and independent of the possession or enjoyment of any real or corporeal property."
>
> *Payn* v. *Beal* (N. Y.), 4 Denio 405, 412.

> "Rent is a right to profit, *usually though not necessarily* money (italics ours); for it frequently consists of a part of the products of the land, labor, etc. It is the compensation, either in money, provisions, chattels or labor, which is received by

the owner of the soil, or the persons entitled to the possession of the premises leased, for the use and occupation thereof."

Fisk v. *Brayman,* 42 Atl. 878, 880, 21 R. I. 195.

"An agreement whereby a party had the exclusive right to mine coal under certain land for 20 years, unless the coal sooner gave out, and to use in connection with the mines five acres of the surface of the land, to erect buildings thereon, and to build and operate railroads and to flow water thereover, for a certain royalty per ton of the coal mined, not to fall below a fixed amount per year, payable as rent for all privileges granted, was a lease, creating the relation of landlord and tenant within code paragraph 2017, giving the landlord a lien for rent, *the royalty being equivalent to rent.*"

Lacey v. *Newcomb,* 95 Iowa, 287; 63 N. W. 704.

"Mining rent, is a term which is used to mean *the consideration money* of a mining lease, whether that lease creates a tenancy, grants a license or an incorporeal right, or conveys a fee.

It may be (1) a fixed sum; (2) a certain annual sum; (3) a royalty on the amount of minerals extracted payable at fixed intervals or times; (4) such a royalty but not less in the aggregate than a fixed amount each year; (5) such a royalty and covenant to mine a certain minimum amount or pay royalty thereon."

1 Barringer and Adams Law of Mines and Mining, p. 117.

"The assignment of the monthly royalties payable as rent under a coal lease is not the assignment of an open account but a right under a contract."

Steele v. *Mills,* 68 Iowa, 406.

In view of the uniform holding of the courts as shown by the rule announced in the foregoing authorities, rent or royalty dependent upon a certain per centum of the value of the ore mined as is provided for in the Noble assignment could never be considered as a part of the corpus of the estate nor as a right or license to mine, but the provision in said assignment quoted by appellant in its brief on page 32, "providing that if the lease to Abrams to which it refers, should be surrendered and become void the within lease shall hold good for a period of ten years," does not transform the instrument into a lease even if by a clear clerical error the word lease is used instead of assignment.

It if be conceded that Blackhawk could assign his royalties under the Abrams lease, and if Abrams should surrender his lease or it should become void by reason of failure to work or any other cause amounting to a forfeiture, and Blackhawk should subsequently within the term of the assignment execute a new lease to Abrams or another, we contend that the subsequent lessees would take subject to an existing assignment of rents for the period of assignment on the theory that an obligation to pay rent is a covenant which runs with the land and in effect by such an assignment Blackhawk assigned any rents which might be recovered during the ten year period in which he was allowed the full *jus desponende* over his mineral estate, and hence it would be immaterial to the assignment whether the original Abrams lease or any of the subsequent leases were in force.

"The right of a lessee of minerals to assign in whole or in part his lease, or the rights and premises thereof, depends upon the nature of his estate. If his estate is an estate in fee in the minerals, he, of course, has all the powers of alienation and subdivision possessed by any other owner of the fee. If his lease is a lease of the land with appurtenant mining rights, he has likewise full powers of assignment and division. If, however, his estate is an incorporeal hereditament he may assign it, but not divide it, unleses the power is expressly conferred in the grant. If it is a mere license, the right is personal and uncapable of assignment.

As between the assignee of a lease and the lessor the former acquires all the rights of his assignor as they existed at the time of the assignment unless there is something in the lease to the contrary. So also is he bound by all the covenants of the lease, and all the obligations thereunder to which the lessee was subject at the date of assignment. All covenants which by their terms or nature are continuous, or which, in other words, run with the land, are binding upon him during his ownership in the lease."

1 Barringer *&* Adams, Law of Mines *&* Mining, p. 136.

"The covenant to pay rent being one which runs with the land, the assignee is liable thereon."

Supra. p. 118.

Inasmuch as the lessees during the term covered by the Noble assignment and the subsequent assignment to appellees, A. S. Thompson and V E. Thompson all claim through the original lessee, it would be immaterial to these appellees which of the leases in question were sustained.

III.

The Government was not authorized to prosecute in its name the case at bar against these appellees or against the defendants, Noble, Cooper or A. J. Thompson, even if the bill sufficiently alleges fraud inasmuch as none of the assignments and leases questioned exceed in duration a term of ten years from the date of their execution and are not violative of any restriction imposed by Congress; and for the reason that they involve a cause of action which, if it exists at all, is between Charley Quapaw Blackhawk, a citizen of the United States and of the State of Oklahoma, over whom the courts have jurisdiction and relative to whose affairs insofar as his mineral estate for a ten year term is concerned, the Government owes no duty of protection and has no supervisory Governmental policy to maintain.

(A) *The United States Courts for the Indian Territory from January 1st, 1898, to November 17, 1907 (The date of admission of the State of Oklahoma into the Union), had full and complete jurisdiction over the person and estate of Charley Quapaw Blackhawk, and said Indian could have sued or been sued in such courts and a final judgment rendered therein would be binding on all parties to the action. So far as his mineral estate for a period or term of ten years was concerned he was the sole party in interest and the Government could not have sued for and in his behalf.*

Congress by an Act passed June 7, 1897, and on the same day the leasing act, under the terms of which the

leases and assignments involved in this case were made, was passed, conferred jurisdiction upon its courts in the Indian Territory over Indian persons and estates in the following terms:

> "Provided further, that on and after January First, Eighteen Hundred and Ninety-Eight, the United States Courts in said Territory shall have original and exclusive jurisdiction and authority to try and determine all civil causes in law and equity thereafter instituted and all criminal causes for the punishment of any offense committed after January First, Eighteen Hundred and Ninety-Eight, by any person in said Territory, and the United States Commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said Territory; and the laws of the United States and the State of Arkansas in force in the Territory shall apply to all persons therein *irrespective of race* (*italics ours*). Said courts exercising jurisdiction thereof as now conferred upon them in the trial of like causes; and any citizen of any one of said tribes otherwise qualified who can speak and understand the English language may serve as a juror in any of said courts."
>
> 30 Stats. 62.
> 1 Kappler Indian Laws & Treaties, pp. 87-88.

Congress clearly made Charley Quapaw Blackhawk *sui juris* insofar as the disposal of his mineral estate for ten years was concerned, he was invested with the full rights of citizenship and given full and complete authority to make use of the white man's bulwark of protection, the courts. This was in pursuance of the policy of the

Government to pave the way for the final removal of all restrictions. As was said by this court in the case of *In re Heff*, 49 L. Ed. (U. S.) 853, "It (Congress) may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*."

The court in the case of *United States* v. *Zumwalt*, 186 Fed. Rep. 598, states the rule in the following language:

> "It follows that it is not only for Congress to determine when and how the relation of guardianship shall be abandoned, but to what extent. It may abandon some of the rights and duties of such relations and retain others."

As far as these appellees, A. S. Thompson and V. E. Thompson, are concerned, the record shows that Blackhawk did resort to the courts; obtained a judgment and in pursuance to a prior agreement entered into with these appellees assigned them a one-half interest therein. How, then, can the Government at this time be heard to question this transaction? This court has said in the case of *Hickman* v. *United States*, cited by appellant, that, "when the United States itself undertakes to represent the allottees of lands under restriction, and brings suit to cancel prohibited transfers, such action necessarily precludes the prosecution by the allottees of any other suit for a similar purpose, relating to the same property."

Supra, 32 Sup. Ct. Rep. 435.

A fortiori it would be equally true that when the Indian who has been given authority to sue has prosecuted his action to final judgment, the government would be precluded from the prosecution of another suit relating to the same property. The legal status of the Noble assignment of royalty has been determined by a court of competent jurisdiction and a one-half interest in Noble and Cooper held valid and a one-half interest therein decreed in Blackhawk and a one-half of this same interest is held by these appellees which the government in this action is seeking to set aside (R. p. 67).

(B) *The State Courts of Oklahoma succeeded to the jurisdiction of the United States Courts of the Indian Territory on the admission of Oklahoma into the Union, Nov.* 17, 1907, *as to the extinguished rights of the government in and to the mining leases and assignments in question, by authority of the Enabling Act passed by Congress and providing for the admission of Indian Territory and Oklahoma Territory into the Union as the State of Oklahoma; and this action having been brought since the admission of Oklahoma would be, if at all, in the State Courts instead of the Federal Courts and the demurrers were therefore properly sustained."*

The "Enabling Act" referred to reads as follows:

> "Be It Enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, that the inhabitants of all that part of the area of the United States now

> constituting the Territory of Oklahoma and the Indian Territory as is present described, may adopt a Constitution and become the State of Oklahoma as hereinafter provided; provided, that nothing contained in said Constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (*so long as such rights shall remain unextinguished*) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if the act had never been passed."
>
> 34 Stat. at Large, 267-278.

We submit that this Act in effect gives to the State Courts full and exclusive jurisdiction over the mineral estate of Charley Blackhawk.

Conclusion.

We, therefore, respectfully submit that the judgment of the court below was in all things correct and should be sustained.

Respectfully submitted,

A. Scott Thompson,
Vern E. Thompson,
Solicitors Pro Se.

No. 287.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES,

VS.

CHARLES E. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON AND V. L. THOMPSON, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF ON BEHALF OF A. J. THOMPSON, APPELLEE.

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No. 127.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES,

VS.

CHARLES F. NOBLE, JOHN M. COOPER, A. J. THOMPSON, A. S. THOMPSON, AND V. E. THOMPSON, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT.

For the purpose of a fair consideration of the questions involved upon this appeal, we think the statement set forth in brief filed on behalf of the appellant a sufficient statement of the matters involved, and adopt same by reference thereto.

Questions Involving the Rights of This Appellee.

For the purpose of the argument which we shall offer on behalf of the appellee herein, A. J. Thompson, we suggest that the questions involved on this appeal, so far as same affect appellee, are as follows, to-wit:

1. Was the lease to this appellee which it is sought to have cancelled invalid because it exceeded the permission of the leasing statute?

2. If such lease was not made in violation of such statute, can the appellant maintain a suit to cancel the same for fraud?

ARGUMENT.

1. Was the lease to this appellee which it is sought to have cancelled invalid because it exceeded the permission of the leading statute?

The character of title by virtue of which the lands in controversy were acquired and are held and such information as is available relative to the method of procuring such title will be sufficiently set forth in the brief to be filed on behalf of the appellees, A. S. Thompson and V. E. Thompson, to which we refer.

2. What is the status of the Quapaw Indians under the doctrines enunciated in the case of in re Heff, 197 U. S. 488, and cases following the same?

It is urged on behalf of appellant herein (brief, p. 33):

> "The Indian was a ward of the government whose protection particularly in respect to the allotment has not been committed to the laws of the State,"

and it is urged that the doctrine enunciated by this court in the case of *In re Heff*, 197 U. S. 488, is inapplicable to the Quapaw Indians and their allotted land, and the case of *United States* v. *Celestine*, 215 U. S. 278-290, is cited as an authority for such position.

In our judgment counsel are mistaken in their view of this matter and we submit that the laws in force in the State of Oklahoma since its admission, and in force

in the Indian Territory prior thereto, places the Quapaw allottee upon an equal footing with Indians whose lands were allotted under the provisions of the General Allotment Act of February 8, 1887.

As early as March 2, 1889, the Congress of the United States passed an act establishing a United States Court in the Indian Territory (25 U. S. Stats. 783). By section one of this act the territorial limits of said Territory were defined and within the Indian Territory as thus defined was the reservation occupied by the Quapaw Indians. By section five of that act it was provided:

> "That the court hereby established shall have exclusive original jurisdiction over all offenses against the laws of the United States within the Indian Territory as in this act defined not punishable by death or by imprisonment at hard labor."

By section six of said act the civil jurisdiction of said court is defined. If by the provisions of this act the Quapaw Indians were not subjected to the laws of the United States in force in the Indian Territory, both civil and criminal, then the act of Congress of May 2, 1890 (26 U. S. Stats. 81), extended the jurisdiction of the United States Court above mentioned by the following language:

> "That the court established by said Act (Act March, 1889, *supra*) shall in addition to the jurisdiction conferred thereon by said Act, have and exercise within the limits of the Indian Territory, as defined in this section, jurisdiction in all civil cases in the Indian Territory, except cases over which the tribal courts have exclusive jurisdiction;

> and in all cases on contracts entered into by the citizens of any tribe or nation, with citizens of the United States in good faith, and for valuable consideration, and in accordance with the laws of such tribe or nation, and such contracts shall be deemed valid and enforced by such court; and in all cases over which jurisdiction is conferred by this act, or may hereafter be conferred by act of Congress; and the provisions of this act hereinafter set forth shall apply to said Indian Territory only."

By section nine of an Act of Congress approved March 1st, 1895 (28 U. S. Stats. 693), further provision was made concerning the jurisdiction of the United States Court in the Indian Territory. But if it be maintained on behalf of appellant that none of the provisions of the statutes to which we refer, are sufficiently comprehensive and specific to confer upon the Quapaw Indians in the Indian Territory, the benefits of, and subject them to, the laws then in force in said Territory both civil and criminal, we find that Congress has legislated further upon this question, and used language sufficiently clear and certain to forever quiet and put at rest the contention of counsel that

> "The decision in the matter of Heff, 197 U. S. 488, is inapplicable to these Oklahoma Indians."

By the provisions of an Act of Congress approved June 7th, 1897, being the same date upon which the Act authorizing allottees of Indian lands in the Quapaw Agency to lease their allotments for mining and business purposes for a term of yeafs, Congress passed an Act in which it is provided as follows:

> "That on and after January 1st, 1898, the United States Court in said Territory (Indian Territory) shall have *original and exclusive* jurisdiction and authority to try and determine all civil causes in law and equity thereafter instituted, and all criminal causes for the punishment of any offense committed after January 1st, 1898, by any person in said territory, and the United States Commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said Territory; and the laws of the United States, and the State of Arkansas, in force in the Territory, shall apply to *all persons therein, irrespective of race.* (Italics ours.)

And again if the language of the above mentioned Acts are not sufficient, Congress by Act approved April 28, 1904 (33 U. S. Stats. 573), used language which to us appears to be so clear that there can be no further reason for counsel insisting that the decision and doctrines enunciated in the Heff case and the cases following it are "inapplicable to these Quapaw Indians."

By section two of the last mentioned Act it is provided as follows:

> "All of the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and *extended in their operation so as to embrace all persons and estates in said Territory whether Indian, Freedman or otherwise*" (Italics ours), "and full and complete jurisdiction is hereby conferred on the District Courts in said Territory in the settlement of all estates of decedents, the guardianships of minors and incompetents, whether Indians, Freedmen or otherwise."

By the provisions of the Act of Congress approved June 16, 1906 (Chap. 33, 35, U. S. Stat. 1905-1906), commonly referred to as "The Enabling Act of the State of Oklahoma," and the Constitution of said State framed pursuant thereto, the jurisdiction of the United States courts in the Indian Territory is extended to the courts created by said Constitution, except in those cases in which the Federal Courts would have jurisdiction under the laws of the United States, and it is provided that no rights theretofore conferred upon the Indians in the Indian Territory were in any manner withdrawn or modified.

Therefore, we submit that the original allottee of the land involved in this case, is possessed of ample power and authority of law to institute, and prosecute in the courts of his State any action for the protection of his rights, the same as any other citizen of said state, and in fact it appears from the record that he availed himself of this right in an action against Noble and Cooper, and that the contention of counsel for the appellant that he could not do so is without merit or basis in law. However, we do not wish to be understood as assuming the position that because Charlie Quapaw Blackhawk is possessed of the right and authority to maintain and prosecute suits in his own name in the courts of his state, that for this reason the courts of the United States have not jurisdiction of a suit in his behalf prosecuted by the United States in its own name in cases necessary to enforce and protect any right or grant

of the United States Government where said Government has not relinquished or withdrawn its supervisory power or authority to protect the same.

In other words, that if the leases executed by said Indian allottee, and which the appellant in this case seeks to have cancelled, were made in violation of a restraint or restriction placed upon the lands of said allottee by the United States, then, notwithstanding the fact that the allottee may bring a suit in his own name, if he so elects, yet the United States may invoke the aid of its courts in setting aside such illegal leases. And it brings us down to the one question which, to our mind, determines whether the learned lower court was correct in sustaining the demurrers to appellant's bill of complaint, and that question is:

> "Has the United States so far relinquished and withdrawn its supervisory power and authority over Charlie Quapaw Blackhawk in the matter of leasing his allotted lands for mining purposes, as to authorize and empower him to enter into the lease which it is sought to have cancelled?"

A careful reading and consideration of the Act of June 7th, 1897, empowering allottees of land in the Quapaw Agency to lease their lands for the purposes and terms set forth in said Act, a copy of which appears at page 3 of appellant's brief, in the light of the previous decisions of this court, can it occurs to us, result in but one conclusion.

In the case of the *United States* v. *Celestine*, 215 U. S. on page 290, the court speaking through the late Justice Brewer, uses this language:

> "We had occasion *in re* Heff, *supra*, to notice the fact that the first dealings with Indians were with them as tribes, but that of late there had been a change in the policy, and a disposition to put an end to tribal organization, and give them, as individuals, all the rights of citizenship, saying (p. 499), 'Of late years a new policy has found expression in the legislation of Congress, a policy which looks to the breaking up of tribal relations, the establishing of separate Indians in individual homes, *free from national guardianship* (Italics ours), and charged with all the rights and obligations of citizens of the United States. Of the power of the government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time, abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*. And it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the court to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended, and courts may wisely insist that the purpose of Congress be made clear by its legislation, but when that purpose is made clear, the question is at an end.' "

In order to determine whether it was the intention of Congress to apply this "new policy" to the Quapaw Indians in the making of mining leases by them, under the Act of June 7th, 1897, and whether Congress in

said Act has given clear and certain evidence of its intention to "abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris*," it is necessary to pass to a consideration of said Act; and, if Congress, by said Act, has abandoned such guardianship it is not within the power of this court, or "of the courts" to "overrule the judgment of Congress." It is this Act which appellant claims is contravened and violated by the leases in controversy; and it is this Act which the learned District Court held "placed the Quapaw Indian allottee upon an equal footing with his white brother" in the making of the mining leases therein provided for.

And it is important in the consideration of this matter to review all of the lease laws passed by Congress pertaining to the allottees in the Quapaw Agency. And in order that the court may have a clear understanding of this matter, we here call attention to the fact that the term "Quapaw Agency," includes not only the Indians of the Quapaw tribe or nation, but also the remnants of seven other bands or tribes of Indians, and their reservations, to-wit: The Confederated Peoria Indians; The Western Miami Indians; The Wyandotte Indians; The Ottawa Indians; The Eastern Shawnee Indians; The Seneca Indians of Indian Territory, and The Modoc Indians of Indian Territory; we also call attention to the further fact that the allotments of land to these various tribes or bands of Indians were not all made under the provisions of the same Act. However, the lands of all

of said tribes in the Quapaw Agency, except the Miamis and Peorias and the Quapaws, were made pursuant to the provisions of the General Allotment Act of 1887, and the amendment thereto of February 28th, 1891 (26 Stat. 794); the lands of the Peoria and Miami Indians were alloted under the provisions of the Act of March 2nd, 1889 (25 Stat. 1013); and the Quapaw Indians were allotted under the provisions of the Act of March 2, 1895 (28 Stat. 907) by the terms of which Act nothing whatever was said concerning the power of the Indian to lease his hands. The only restraint placed upon said lands being in the following language:

> "That said allotments shall be inalienable for a period of twenty-five years from and after the date of said patent."

The Peoria and Miami Indians in the Quapaw Agency, by the provision found in Section 2, of the Act above mentioned, were granted authority to lease their allotted lands "For any period not exceeding three years," and it is provided by section 3 of the Act of February 28th, 1891, amending the General Allotment Act of 1887, as follows:

> "The whenever it shall be made to appear to the Secretary of the Interior, that, by reason of age or other disability, any allottee under the provisions of said Act, or any other Act or treaty, cannot personally, and with benefit to himself, occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations and conditions, as shall be prescribed by such Sec-

> retary, for a term not exceeding three years for farming or grazing, or ten years for mining purposes."

Thus stood the law concerning the leasing of allotted lands in the Quapaw Agency from the time of the making of such allotments to the Act of June 10, 1896 (29 Stats. 321), which appears at page 30 of appellant's brief, and reads as follows:

> "That the allottees of land within the limits of said Quapaw Agency are authorized to lease the same for a term not exceeding three years for farming purposes or five years for mining or business purposes."

This was the first legislative declaration by Congress of its intention to abandon its guardianship over the Indians of the Quapaw Agency who had received their allotments under the provisions of the General Allotment Act, and its amendment; and the first positive declaration which can be construed as authorizing the allottees of the Quapaw tribe or nation to make a lease of their allotted lands for any term or for any purpose. By the terms of this Act, Congress undoubtedly evinced a positive intention of permitting these Indians of the Quapaw Agency, a large portion of whom, prior to that time could not lease, except in case of old age or other disability, and then only on such conditions as the Secretary of the Interior might prescribe, to make and enter into leases for the purposes and terms therein specified without any supervisory control of the United States

through any of its officers or departments. By the Act of June 7th, 1897 (30 Stat. 72), it is provided as follows:

> "That the allottees of lands within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees, and tenants, shall have the right to employ such assistants, laborers and help from time to time, as they may deem necessary; provided, that whenever it shall be made to appear to the Secretary of the Interior that by reason of age or disability, any such allottee cannot improve or manage his allotment properly, and with benefit to himself, the same may be leased, in the discretion of the secretary upon such terms and conditions as shall be prescribed by him. All Acts and parts of Acts inconsistent with this are hereby repealed."

It seems to us that the language employed by Congress in this Act can have but one reasonable and logical construction, and that is, that all allottees, except those who by reason of age or disability, cannot improve or manage their allotments properly and with benefit to themselves, are as fully and completely authorized and empowered to make and enter into leases of their lands, for the purposes and terms stated in said Act, as a white citizen could lease lands owned in fee and free from restriction. The very fact that by the terms of said Act it was provided "That whenever it shall be made to appear to the Secretary of the Interior, that by reason

of age or disability, any such allottee cannot improve or manage his allotment properly and with benefit to himself, the same may be leased, upon such terms and conditions as shall be prescribed by him," clearly manifests the only reservations which Congress intended to make in the matter of the leasing of such allotted lands.

It is suggested by opposing counsel (appellant's brief, p. 23):

> "The later acts should not be allowed (if it be avoidable) a meaning calcuated to undermine and defeat the basic purpose of the earier act, which concededly is not attempted to be repealed but only modified."

In view of the fact that by the terms of said Act of June 7, 1897, *supra*, it is expressly provided that "all acts and parts of acts inconsistent with this are hereby repealed," we fail to understand upon what theory counsel suggests that the earlier act "is not attempted to be *repealed* but only modified."

Now let us ascertain what Acts are inconsistent with the provisions of this Act, and what parts of Acts are inconsistent with this, insofar as the same pertains to a Quapaw Allottee. The only Act which, as an entirety, was inconsistent with this Act, was the Act of June 10th, 1896, *supra*, by which the Quapaw Indians according to our contention first received authority to lease their allotted lands. Another Act which, if we adopt the theory of counsel for appellant as being correct, and as to that part of it, we believe they are correct, is

the Act of March 2nd, 1895, approving the allotments made by the Quapaw Indians under Act of the Quapaw National Council before referred to. It being maintained on behalf of appellant that the restraint against alienation was also a restraint against any power to lease. Then so much of the allotment Act providing, "That said allotments shall be inalienable for a period of twenty-five years, from and after the date of said patents" as is inconsistent with the leasing of a Quapaw allotment for a term of three years, for farming and grazing purposes, and for a term of ten years for mining and business purposes, is by the above clause repealed. Or in other wards, the effect of the passing by Congress of the Act of June 7th, 1897, *supra*, is to remove all of the restrictions from the lands of a Quapaw allottee insofar as the making of a lease or leases for the terms and purposes specified in said Act, is concerned. And this was evidently the intention of Congress in carrying out is "new policy" with the Indians. It was granting to said allottees the power of the limited and unrestrained (limited as to purposes and time but unrestrained as to terms and conditions) control and management of all their allotted land for the purposes and periods of time prescribed by said Act, thus allowing them the benefit of the experience to be derived from such business transactions as would necessarily ensue in the leasing of their said lands, but without permitting them to part with or make final disposition of said lands before the expiration of the period of inalienability.

We submit that the reasoning and conclusion of the learned trial court upon this question is sound, logical and correct and that we can do no better in endeavoring to express our views on this subject than to quote the following paragraph from his opinion:

> "In my opinion Congress intended that within the limitations as to purpose and terms the allottee shall exercise the same independent right to lease his property and enjoy the proceeds thereof that the law gives to other citizens and in lieu of the governmental supervision thus partially withdrawn gave him the status of a citizen and access to a forum where like any other citizen he would redress his wrongs.
>
> I believe that it was the intention of Congress that within the limitations mentioned this right of disposal of his property by leasing was granted as means of affording him that experience in business affairs necessary to enable him to eventually handle his property without any restrictions whatever. This is consistent with the purpose manifested by Indian legislation of recent years to extend as much as may be consistent with his welfare the time when the Indian in this state shall have the same rights of disposing of his property as his white neighbor exercises over his, hence the absolute supervision so long exercised by Congress over the Indian, keeping them a people apart from other races, dependent and incapable is gradually being withdrawn and while it is the duty of the court to recognize the existence of such supervision whatever it does not appear to have been withdrawn, it is equally their duty to recognize in the Indian that measure of independence and equality under the law with his white brother which the acts of Congress from time to time indicate that body intended the Indian should have."

In our judgment the illustration made use of by Mr. Justice Phillips the case of *Buffalo* v. *Goodrum*, 162 Fed. 817, is a very apt one; he makes use of the following explanation concerning the lands of the Quapaw allottees:

> "Congress conceded the lands with a firm cable attached to hold them to the exclusive use and possession of the Indian without qualification restricting the power to divest themselves of the use and title until after a fixed period."

In other words he seemed to grasp the situation, which as we view it is the correct one, in recognizing that for the limited time mentioned in the lease act, the restrictions had been removed but with the firm cable attached, being the restriction against alienation, so that only the temporary use and possession could be parted with, the title still remaining in the allottee so that at the end of any given time the land would be returned to him or to his heirs free and unincumbered, and that no difference how improvident the allottee might be in the management and control of his land, he could not dispose of the absolute title thereto.

3. Does the conclusion of the court below tend to defeat the purpose of the proviso in the leasing act respecting the power and duty of the Secretary of the Interior to make leases for incapable Indians?

Counsel for appellant in their brief urge that such is the effect of the conclusion arrived at by the lower courts.

We fail to see the merit of this contention in view of the fact that it has been conceded from the beginning that the allottee whose lands are involved herein had the capacity to make a valid and binding lease of his lands without the supervision and control of the Secretary of the Interior (Record, p. 11) and we suggest that if he had the capacity to enter into the first valid lease without the assistance of the Secretary of the Interior that he would have the capacity to enter into a valid lease at any other time unless there had been a change wrought in his condition. In our judgment the Secretary of the Interior at any time, upon a showing made to him that for the reasons set forth in the proviso in the leasing act any allottee cannot improve or manage his allotment properly and with benefit to himself, might lease such allotment upon such terms and conditions as he might prescribe, and that thereafter such allottee would be powerless to enter into any further lease upon such lands, but in the making of such lease by the Secretary of the Interior, we think that the full unexpired term of any prior valid lease executed by such allottee at a time when he had the capacity to make such lease, as is conceded to the allottee of the lands in controversy herein, would have to be allowed to run before the lease executed by the Secretary of the Interior in his behalf could become effective, properly and with benefit to himself when the restrictions against alienation shall expire.

We think there can be no serious contention but what is termed the "new policy" of Congress toward the

Indians, prompted the enactment of the law now under consideration and we submit that any other construction than that contended for by the appellee would render the operation of said act practically useless so far as affording the Indian allottee any experience in the business of handling and leasing his allotted lands.

While it is not exactly clear to us as to the construction which counsel for the appellant in this court contends should be placed upon the leasing act, we suggest that it was the contention of counsel in the lower courts that when once the Indian had exercised the power to make a lease, that the power conferred by said act would thereby be exhausted until the expiration of the full term of such lease.

It is suggested by counsel for appellant (appellant's brief p. 22) that "We do not contend for this, but we do contend against a lax construction." If the strict construction urged on behalf of the appellant in the lower court be adopted, then we suggest that only three times during the period of inalienability of his allotted lands could a Quapaw Indian exercise the right to make a mining lease thereon. This, we suggest, would not afford him that opportunity which Congress must have intended to confer upon him by the enactment of the statute under consideration.

4. The lease to appellee not a reversionary lease.

We suggest that the argument of opposing counsel that the allottee was in a position analogous to a life tenant equipped with an express power to lease for a

definite term of years, is not well taken. We have no criticism to offer upon the authorities cited in support of this contention (pp. 26-28), but are of the opinion that the position and authorities in support thereof have no application to the questions involved herein.

II.

The Government not authorized to bring suit in the name of the United States for the purpose of setting aside leases for fraud, unless such leases are made in violation of law.

We submit that if Congress had removed absolutely from the Quapaw lands the restriction against alienation and a Quapaw Indian had been defrauded of his land, or had improvidently made a sale thereof, that the United States would be in no position to question such transfer, and for the same reason it is not now in a position to question the creation or transfer by such Indian allottee of a lesser estate in such lands where in the creation of such estate he is acting in pursuance of the authority conferred by an act of Congress as was Charley Quapaw Blackhawk at the time of making the leases in controversy in this cause.

If it be true, as alleged in appellant's bill of complaint herein, that the Quapaw allottee, Charley Quapaw Blackhawk, was an ignorant, uneducated child of nature; was old and infirm and wholly incapacitated for the transaction of business, then we suggest that possibly it might have been made to appear to the Secretary of the

Interior, under the terms of said Act of June 7th, 1897, "That by reason of age or disability," said allottee could not improve or manage his allotment properly and wit' benefit to himself, and in that event, the leasing of his lands would be under the supervision of the Secretary of the Interior, but in view of the fact that it is conceded that said allottee had the capacity to enter into a valid and binding lease, we fail to see the relevancy of many of the suggestions contained in the brief of opposing counsel concerning the ignorance and helplessness of this allottee to a proper determination of the issues involved in this case.

In the case of *Heckman* v. *United States*, 224 U. S. 413, there was no question but that the conveyance involved therein had been taken in defiance of the statutory restrictions upon alienation, and it was upon that basis that the authority of the executive branch to bring suit in the name of the United States to set aside such conveyances, was upheld, and we concede that if it should be determined by this court that the lease in question was made in violation of the restriction against alienation, that then there would be authority for the maintenance of this suit but we challenge counsel to find a single authority sustaining the power of the government to prosecute a suit for the cancellation of any instrument affecting Indian lands not made in violation of some Act of Congress.

The cases of the *United States* v. *Gray*, 201 Fed. 291, and *United States* v. *Fitzgerald*, id. 295, do not, in our judgment, militate against the position of appellees herein.

Conclusion.

We submit that the judgment of the lower court in affirming the judgment of the District Court for the Eastern District of Oklahoma is correct and should be affirmed.

Respectfully submitted,

S. C. FULLERTON,
PRESTON S. DAVIS,
Solicitors for A. J. Thompson, Appellee.

UNITED STATES OF AMERICA *v.* NOBLE.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 127. Argued March 1, 2, 1915.—Decided April 5, 1915.

The Quapaw Indians are still under National tutelage; the guardianship of the United States continues notwithstanding the citizenship conferred upon allottees.

Where Congress has imposed restrictions upon alienation of an allotment, the United States has capacity to sue for the purpose of setting aside conveyances or contracts transferring such restrictions.

Restrictions under the act of March 2, 1895, being for a specified period, were absolute and bound the land for that period whether in the hands of the allottee or his heirs except as to leasing it for the specified terms permitted by the act of June 10, 1896, or by the supplemental act of June 7, 1897; neither of those acts gave the allottee or his heirs any power to dispose of his or their interest in the lands subject to the lease or any part of it.

Assignments of interest in rents and royalties which pertained to the reversion of the land of 1896 and 1897 are invalid.

Rents and royalties already accrued from lands are personal property, but those to accrue are a part of the estate, remaining in the lessor.

"Overlapping leases" of Indian allotments are abnormal and the practice of making them facilitates abuses in dealing with ignorant and inexperienced Indians.

The rule that a general power to lease for not exceeding a specified period, without saying either in possession or on reversion, only authorizes a lease in possession and not *in futuro*, applies to the power given allottee Indians by the acts of 1896 and 1897 and leases made for the full period subject to an existing and partly expired lease for the same number of years are unauthorized and void.

197 Fed. Rep. 292, reversed.

THE facts are stated in the opinion.

Mr. Assistant Attorney General Knaebel, with whom *Mr. S. W. William* was on the brief, for the United States.

Mr. A. S. Thompson, Jr., and *Mr. V. E. Thompson*, with whom *Mr. S. C. Fullerton* and *Mr. Preston Davis* were on the brief, for appellees.

MR. JUSTICE HUGHES delivered the opinion of the court.

The Government brings this appeal to review a decree of the Circuit Court of Appeals, which affirmed a decree dismissing, upon demurrer, its suit as against the appellees. 197 Fed. Rep. 292.

The suit was instituted against the appellees, and others, to set aside certain mining leases of an Indian allotment, and assignments of rents and royalties, upon the ground that they were procured in fraud of the allottee, and were in violation of the restriction against alienation imposed by Congress. The land in question had been allotted to Charley Quapaw Blackhawk, a member of the Quapaw tribe of Indians, under the act of March 2, 1895, c. 188, 28 Stat. 876, 907. Patent was issued on September 26, 1896. The act of 1895 contained the following restriction:

"*Provided* That said allotments shall be inalienable for a period of twenty-five years from and after the date of said patents."

By the act of June 10, 1896, c. 398, 29 Stat. 321, 331, Congress authorized the allottees of lands, within the limits of the Quapaw Agency, 'to lease the same for a term not exceeding three years for farming purposes, or five years for mining or business purposes.' A further authorization—the one here involved—was made by the act of June 7, 1897, c. 3, 30 Stat. 62, 72, which was as follows:

"That the allottees of land within the limits of the Quapaw Agency, Indian Territory, are hereby authorized to lease their lands, or any part thereof, for a term not exceeding three years, for farming or grazing purposes, or ten years for mining or business purposes. And said allottees and their lessees and tenants shall have the right to employ such assistants, laborers, and help from time to time as they may deem necessary: *Provided*, That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or disability, any such allottee cannot improve or manage his allotment properly and with benefit to himself, the same may be leased, in the discretion of the Secretary, upon such terms and conditions as shall be prescribed by him. All acts and parts of acts inconsistent with this are hereby repealed."

The bill alleges that the allottee made the following mining leases of the allotted lands, and assignments of rents and royalties, to wit:

(1) Lease, dated January 11, 1902, to A. W. Abrams, for ten years from date, in consideration of the sum of $10, and a royalty of five per cent. of the market value of all minerals mined or removed (except gas, for which there was to be paid $40 per annum for each paying well), with the proviso that there should be a minimum rental of $20 a year in case the royalties did not exceed that amount. On August 13, 1903, the lease was assigned by Abrams to the Iowa & Oklahoma Mining Company.

(2) Lease, dated August 24, 1903, to A. W. Abrams,

for ten years from date, in consideration of $18, and of royalties which were the same as in first lease save that the minimum rental was $21 a year. This lease was assigned on November 2, 1904, to the Iowa & Oklahoma Mining Company.

(3) Lease, dated March 25, 1905, to L. C. Jones, and the appellee A. J. Thompson, for ten years from date, for $10 and five per cent. royalty. It was stated that the lease was subject to the first lease above mentioned. The interest of Jones was assigned to the appellee, A. J. Thompson, on July 31, 1905.

(4) Lease, dated April 4, 1905, to the Iowa & Oklahoma Mining Company, for ten years from date, for $25, with the same royalties as in the first lease above mentioned and with minimum rental of $21 a year.

(5) Lease, dated May 12, 1906, to the same company, for ten years from date and with the same consideration as that of the lease described in paragraph (4). It was provided that 'this lease and all former leases above referred to shall run concurrently,'—the lessee being entitled to elect under which of the leases it would operate.

(6) Lease, dated July 28, 1906, to the same company, for the term of twenty years from date for $21, with the same royalties and minimum rental as those reserved in the preceding lease described in paragraph (5):

(7) Grant or assignment, dated August 16, 1902, to the appellee, Charles F. Noble, of all the allottee's 'right, title and interest in and to the royalty, rent and proceeds' of the mining lease dated January 11, 1902, made to Abrams, described in paragraph (1). It was further agreed, by said instrument, that if the Abrams' lease 'should be surrendered and become void the within lease should hold good for the period of ten years.' On the same date, Noble assigned 'a one-half interest in the above-described instrument' to John M. Cooper.

(8) Assignment, dated February 21, 1906, to the ap-

pellees, A. S. Thompson and V. E. Thompson. It recited a judgment, in a suit against Noble and Cooper, decreeing that the allottee was the owner 'of two and one-half percentage of the entire product mined from said land and sold on or subsequent to the 31st day of January, 1906, and up to and including the 11th day of January, 1912,' and assigned to the above-mentioned appellees 'an undivided one-half interest in and to the said judgment for royalties,' that is, 'one and one-quarter per cent. of the whole product on said lands' during the period covered by the first lease to Abrams, described in paragraph (1).

The bill further averred that the allottee, Charles Quapaw Blackhawk, was a full blood Indian, born in 1835, unable 'to read, or write, or understand intelligently the English language,' an 'ignorant and uneducated child of nature,' old and infirm, and wholly incapacitated for the transaction of business; that the lands were worth approximately $100,000; that on January 11, 1902, when the first lease was made, the lands had not been prospected and the value for mining purposes was uncertain, and that the consideration mentioned in that lease was 'equitable and sufficient'; that immediately thereafter, the lessee (the defendant, Abrams) caused the lands to be drilled and prospected and found 'large, valuable and paying bodies of lead and zinc ore'; that for the five years preceding the filing of the bill (July, 1909), there had been 'a number of concentrating plants or so-called ore mills located upon the said land, and in operation,' and that 'the actual value of the output thereof, when in operation,' was in excess of $50,000 a year; that in 1905, and before, the defendant Abrams, through his assignee, the Iowa & Oklahoma Mining Company, had sublet to other mining companies portions of the lands in consideration of a royalty of fifteen per cent. of the market value of the ores mined, which was a reasonable royalty; and that the transactions narrated in the

bill (apart from the first lease to Abrams) were 'inequitable and unconscionable' and a fraud upon the allottee.

The validity of the first lease was conceded by the Government, but it was alleged that all the other leases and the assignments were in violation of the express restriction subject to which the allotment was made.

Demurrers were filed by all the defendants. The Circuit Court held that the Government was not entitled to impeach the transactions upon the ground of fraud, but could challenge the validity of the several instruments as being in violation of the statutory restriction. It is not important here to consider the disposition made of the leases described in paragraphs (2), (4), (5), and (6), as these are not involved in this appeal. It is sufficient to say that the demurrers of Abrams and the Iowa & Oklahoma Mining Company were overruled, and that those of the appellees were sustained. *United States* v. *Abrams*, 181 Fed. Rep. 847. As to the latter, the bill was dismissed, and the decree to that effect was affirmed by the Circuit Court of Appeals, as already stated.

We have, then, the question of the validity of the lease and assignments described in paragraphs (3), (7), and (8).

The Quapaws are still under national tutelage. The Government maintains an agency and, pursuant to the treaty of May 13, 1833, 7 Stat. 424, an annual appropriation is made for education and other assistance (37 Stat. 530). In 1893, the Quapaw National Council made provision for allotments in severalty which were to be subject to the action of Congress and in the act of ratification of 1895 Congress imposed the restriction upon alienation which has been quoted. The guardianship of the United States continues, notwithstanding the citizenship conferred upon the allottees (*United States* v. *Celestine*, 215 U. S. 278, 291; *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 315, 316; *Hallowell* v. *United States*, 221 U. S. 317, 324; *United States* v. *Sandoval*, 231 U. S.

28, 48); and, where Congress has imposed restrictions upon the alienation of an allotment, the United States has capacity to sue for the purpose of setting aside conveyances or contracts by which these restrictions have been transgressed. *Heckman* v. *United States*, 224 U. S. 413; *Mullen* v. *United States*, 224 U. S. 448, 451; *Bowling* v. *United States*, 233 U. S. 528, 534.

1. We may first consider the assignments of rents and royalties. Under his patent, the allottee took an estate in fee, subject to the limitation that the land should be 'inalienable for the period of twenty-five years' from date. This restriction bound the land for the time stated, whether in the hands of the allottee or his heirs. *Bowling* v. *United States, supra.* It put it beyond the power of him, or of them, to alienate the land, or any interest therein, in any manner except as permitted by the acts of 1896 and 1897. See *Taylor* v. *Parker*, 235 U. S. 42. The comprehensiveness of the restriction was modified only by the power to lease; and while the allottee could make leases, as provided in these acts, they gave him no power to dispose of his interest in the land subject to the lease, or of any part of it. The rents and royalties were profit issuing out of the land. When they accrued, they became personal property; but rents and royalties to accrue were a part of the estate remaining in the lessor. As such, they would pass to his heirs, and not to his personal representatives. 1 Washburn on Real Property, *337; *Wright* v. *Williams*, 5 Cow. 499. It is true that the owner of the reversion, when unrestricted in his right to convey, may sever the rent and grant it separately, but this is by virtue of his freedom to deal with the estate in the land. 2 Bl. Com. *176.

It necessarily follows that the allottee in the present case having no power to convey his estate in the land could not pass title to that part of it which consisted of the rents and royalties. It is said that the leases contemplated the payment of sums of money, equal to the agreed per-

centage of the market value of the minerals and thus that the assignment was of these moneys; but the fact that rent is to be paid in money does not make it any the less a profit issuing out of the land. The further argument is made that the power to lease should be construed as implying the power to dispose of the rents to accrue. This is wholly untenable. The one is in no way involved in the other; the complete exercise of the authority which the statute confers would still leave the rents and royalties, to accrue, as part of the estate remaining in the lessor. It was the intent of Congress that the allottees during the period of restriction should be secure in their actual enjoyment of their interest in the land. *Heckman* v. *United States, supra.* The restriction was removed only to the extent specified; otherwise, the prohibition against alienation remained absolute.

The first assignment of royalties, as above described [paragraph (7)], was made on August 16, 1902, of rents to accrue under the first lease, of January 11, 1902, which was to run for ten years. The second assignment made in January, 1906 [paragraph (8)] was, in substance of 'one and one-quarter per cent. of the whole product on said lands' until January 11, 1912. Both were assignments of interests which pertained to the reversion, and both must be held to be invalid under the statute.

2. The lease, here in controversy, was made on March 25, 1905, for ten years from date [paragraph (3)]. The property was already subject to a lease, concededly valid, for ten years from January 11, 1902. The lease under which the appellee claims is what is known as an 'overlapping lease.' It is not necessary to describe transactions of this character, for they are abundantly illustrated in the record which shows that this allottee made six leases of the same rights in less than five years, each for ten years from date with the exception of the last which was for twenty years, and all reserving substantially the same rents and

royalties which were reserved in the first lease at a time when the property had not been prospected. The practice, to say the least, is an abnormal one, and it requires no extended discussion to show that it would facilitate abuses in dealing with ignorant and inexperienced Indians. It is urged, however, that the manner of dealing with the Indians, in gradually releasing them from guardianship and preparing them for complete independence, is for Congress to determine; that Congress has in this case authorized a lease for ten years; that this was a lease for ten years, and no longer, and hence was within the authority; and that, however wise it might have been to prohibit 'overlapping leases,' Congress did not so provide.

We are of the opinion that this is too short a view. The question is as to the scope of the authority given by Congress; that is, whether it did not extend simply to leases in possession, and should be taken not to include 'leases in reversion.' The allottee, as we have seen, is under an absolute restriction with respect to his reversion for a period of twenty-five years from the date of his patent. In the light of this restriction, and of the governmental policy which induced it, there is sound reason for construing the power as not authorizing anything more than a lease in possession, as well understood in the law. At common law, as the Government points out, it was the established doctrine, that a tenant for life with a general power to make leases could make only leases in possession, and not leases in reversion or *in futuro*. He was not authorized by such a power to make a lease to commence 'after the determination of a lease in being.' Such a lease was deemed to be 'reversionary.' *Countess of Sussex* v. *Wroth*, Cro. Eliz. 5; *Shecomb* v. *Hawkins*, Cro. Jac. 318; Yelv. 222; *Winter* v. *Loveday*, Comyn, 37; Sugden on Powers, p. 749; 4 Greenleaf's Cruise's Digest, 165, 166; *Taussig* v. *Reel*, 134 Missouri, 530, 544–547; Woodfall on Landlord and Tenant (19th ed.), 239, 244, 245. "A general

power to lease for a certain number of years without saying either in possession or reversion, only authorizes a lease in possession and not *in futuro*. Such a power receives the same construction as a power to make leases in possession. What is expressed in the one is understood in the other." *Shaw* v. *Summers*, 3 Moore, C. P. 196. This is not to say that an agreement for a new lease, at a fair rental, made shortly before the expiration of an existing lease, would not be sustained in equity. See *Dowell* v. *Dew*, 1 You. & Coll. 345.

We are unable to see that the allottee under the power in question has any better position. The protection accorded by Congress, through the restriction upon the alienation of the allottee's estate—modified only by the power to lease as specified—was not less complete because the limitation was not in the interest of a remainderman, but was for the benefit of the allottee himself as a ward of the Nation. The act of 1897 gives him authority 'to lease' for a term not exceeding the stated limit. Taking the words in their natural sense, they authorize leases in possession and nothing more. The language does not compel the recognition of leases which are to take effect in possession many years after their execution, if, indeed, it could be assumed that they were not intended to be concurrent. Such leases certainly violate the spirit of the statute, and according to the analogies of the law they violate its letter.

If, on the other hand, the lease be deemed to be a concurrent lease, that is, to be effective from its date, then it could only have that effect, being subject to the existing lease, as a grant or assignment of the reversion while the existing lease continued. Accordingly, it would entitle the lessee, as assignee of part of the reversion, to the rent reserved in the previous lease. Bac. Abr., *tit.*, *Leases*, (N); *Harmer* v. *Bean*, 3 C. & K. 307. Woodfall on Landlord and Tenant (19th ed.), 245, 246. But every convey-

ance of the reversion, or of any interest therein, was clearly prohibited by the restriction.

From every point of view, we must conclude that a lease for ten years, made in 1905, subject to an existing lease for ten years, of the same property, which by its terms was to run until 1912, was unauthorized and void.

As the United States was entitled to maintain the suit to cancel these instruments as transgressing the statutory restriction, it is unnecessary to consider the question whether, in the absence of such a violation, the Government would have capacity to sue to redress alleged frauds committed against allottees.

The decree is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.